

Exhibit K

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE VALERIE BAKER FAIRBANK
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,)
PLAINTIFF,)
VS.) NO. CR05-198VBF
Stephen C. Sayre,)
DEFENDANT,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA

WEDNESDAY, JULY 16, 2008

JURY TRIAL - DAY EIGHT

KATIE E. THIBODEAUX, CSR 9858
U.S. Official Court Reporter
312 North Spring Street, #436
Los Angeles, California 90012

1 APPEARANCES OF COUNSEL:

2
3 FOR THE PLAINTIFF,

4 UNITED STATES OF AMERICA:

U.S. DEPARTMENT OF JUSTICE
U.S. ATTORNEY'S OFFICE
BY: RICHARD ROBINSON, AUSA
312 NORTH SPRING STREET
TWELFTH FLOOR
LOS ANGELES, CA 90012

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9 FOR THE DEFENDANT:

STEPHEN C. SAYRE
DEFENDANT PRO SE

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11
12 ADVISORY COUNSEL TO DEFENDANT:
DAVID REED

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JULY 16, 2008

2 8:30 A.M.

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6 (The following proceedings were held in open court
7 outside the presence of the jury:)

8
9 THE COURT: Good morning. It is 9:05. We can get
10 started on jury instructions pertaining to the securities
11 fraud charges.

12 Last night at the request of defendant and his
13 advisory counsel, I concentrated on reviewing and
14 arriving at a tentative on the jury instructions
15 pertaining to the securities fraud charges.

16 After carefully reviewing the matter last
17 night, I fail to see how and why the defense needed some
18 resolution in the jury instructions before presenting
19 their expert, but I did nevertheless prepare a two-page
20 written tentative which I will go over with you now. Of
21 course, this is just a tentative. The court will not
22 finally resolve jury instructions until after all the
23 evidence has been presented.

24 I had my staff give each side a copy of the
25 tentative rulings. I will go through them, and I will

1 invite argument by both sides as appropriate on the jury
2 instructions.

3 Looking at the government's jury instructions
4 first, beginning with instruction -- proposed instruction
5 number 35, the court's tentative is to give that
6 instruction.

7 Next, with respect to the government's
8 proposed instruction 36, which is similar to the
9 defendant's proposed instruction 32, as stated yesterday,
10 the court's instruction is -- the court's tentative is to
11 give a modified version of both instructions consistent
12 with Ninth Circuit model instruction 9.7.

13 In other words, the court, looking at the
14 government's proposed instruction 36, would give the
15 government's proposed instruction 36 as presented.

16 Then, looking at the defendant's proposed
17 instruction 32, the court would give certain of the
18 additional paragraphs requested by the defendant which
19 are taken from 9.7.

20 Looking at the defendant's proposed
21 instruction number 32, lines 22 through 26, this is on
22 page 35 of the defendant's submission, the court would
23 give that instruction.

24 With respect to page 36, lines 1 through 3,
25 the court questions whether that is necessary in light of

1 other parts of the instruction on page 35, lines 16 to
2 17, and other instructions, but I will give lines 1
3 through 3. I will consider giving it. And I would give
4 on page 36 lines 5 and 6.

5 So essentially, the tentative is to give the
6 government's and then -- proposed instruction 36 and then
7 give the portion of defendant's proposed instruction 32,
8 which adds to the government's. In other words, merge
9 the two.

10 Next, continuing with the government's
11 proposed instruction, the court's tentative is to give
12 the government's proposed instructions 37, 38, 39, 40. I
13 would hear argument on 41, but the tentative is to give
14 it as requested. 42, tentative to give.

15 Government's 43, the tentative is to give the
16 second paragraph, lines 9 through 12. I would ask for
17 argument on whether the court should give the first
18 paragraph. There is a question in my mind as to whether
19 the first paragraph in the government's proposed 43 is
20 necessary in light of the fact that the court is
21 essentially giving model -- Ninth Circuit model jury
22 instruction 9.7, which is contained in the blended
23 version of the government's 46 and the defendant's 33.

24 The court would give government's proposed 44,
25 45, and then we get to the government's proposed 46 which

1 pertains to the definition of material.

2 MR. REED: And this is the big area, Your Honor.

3 THE COURT: And I realize that from looking at the
4 papers, but, again, in considering the matter, I feel
5 that the argument that the court needed to decide these
6 and recess early and decide these before the expert
7 testimony continued lacked credibility, but,
8 nevertheless, out of an abundance of caution, I took a
9 break yesterday, and I am reviewing these now.

10 So looking at the government's proposed 46 and
11 the defendant's proposed 33 as set forth in the court's
12 tentative, the court would give the government's proposed
13 46 with a possible modification of paragraph 3 of the
14 government's 46.

15 The instruction, government's proposed 46,
16 particularly paragraphs 1 and 2 of the instruction, finds
17 support in the case law, including TSC Industries, U.S.
18 versus Brooks, U.S. versus Tarrallo, T-A-R-R-A-L-L-O.

19 And I would also refer to the Zweig case,
20 Z-W-E-I-G, 594 F2nd 1261 at 1266. In that case, the
21 Ninth Circuit stated: "The appropriate test for
22 materiality of an admitted fact is whether there is a
23 substantial likelihood that a reasonable investor would
24 consider the fact important in making his or her
25 decision."

1 The government's proposed 46 is more
2 consistent with model instruction 9.7 than the
3 defendant's proposed 33. The court would tentatively
4 reject the defendant's proposed 33 as not necessary. The
5 concept set forth in defendant's 33 relating to the
6 definition of materiality are more appropriately covered
7 by the government's and more accurately covered by the
8 government's proposed instruction 46.

9 So the tentative would be to grant the
10 government's proposed 46, though I have a question as to
11 the third and last paragraph, and deny the defendant's
12 proposed 33 as unnecessary and adequately covered and
13 more appropriately covered by the other instructions.

14 Of course, however, the defendant can argue
15 total mix to the jury and can make that -- can make an
16 argument relating to total mix, but it is not necessary
17 to have this in an instruction.

18 Then, with respect to the government's 47, the
19 tentative is to give.

20 With respect to the government's 48 regarding
21 the term willfully, the court's tentative is to give the
22 government's proposed 48 and to refuse the
23 defendant's 40.

24 The government's instruction accurately states
25 the law and is supported by the case law cited, including

1 the Tarrallo case, 379 F.3d 1174. The defendant's
2 proposed instruction number 40 lacks support and, in
3 fact, is misleading in certain respects, for example, to
4 the extent it implies that knowingly is required.

5 Then, looking at the rest of the government's
6 instructions as to the substantive issues, the court's
7 tentative is to give 49, 50. The court would give 51 but
8 questions whether it is applicable. I assume it is, and
9 it is based upon Ninth Circuit model instruction 5.9. So
10 I would give it as requested tentatively. Same with
11 respect to -- the court would give 52.

12 With respect to the government's proposed
13 instruction 53, which is based on the Ninth Circuit model
14 instruction 4.17, the court would give this instruction,
15 53.

16 MR. ROBINSON: Your Honor --

17 THE COURT: But it seems to be a duplicate of 50.

18 MR. ROBINSON: I'm sorry, Your Honor. I was going
19 to point that out. It was a mistake. We duplicated it.
20 It wouldn't apply.

21 THE COURT: All right. So 53 is withdrawn.

22 Then, 54 I would give. There was an extra
23 page 58, so that would be disregarded. 55, the
24 government's proposed 55, I would give, and this seems to
25 be the same as the defendant's 28.

1 Then turning to the defendant's proposed
2 substantive instructions, the court would -- has already
3 addressed 32 and 33. I would give part of 32 as stated.

4 I would tentatively reject defendant's 33.

5 With respect to the defendant's 34, the
6 court's tentative is to refuse. I find the lack of
7 support -- legal support for this instruction, having
8 read the cases cited.

9 With respect to 35 and 36 of the defendant's
10 proposed instructions, the court's tentative is also to
11 refuse, finding these are essentially redundant, they are
12 not necessary, and that they duplicate other instructions
13 that the court is giving.

14 With respect to the defendant's 37, the
15 court's tentative is to refuse. There is a lack of
16 support for this instruction. Furthermore, the
17 instruction is unnecessary especially in light of the
18 other instructions which the court intends to give, and I
19 would refer to the Ninth Circuit case of SEC versus Rana
20 Research, 8 F.3d 1358 at 1362.

21 With respect to instruction 38, the
22 tentative is to refuse this instruction as worded. The
23 last sentence of the instruction, for example, is
24 over-inclusive and inaccurate and inappropriate to the
25 extent it tells the jury how to look at certain evidence.

1 The last sentence reads: "Thus, for example, statements
2 that are optimistic predictions for a company's
3 performance are not misstatements of material facts about
4 a company or its stock." That is not accurate. It is
5 over-inclusive, and it is instructing the jury on how
6 they should consider the evidence. And those kinds of
7 instructions are not proper.

8 I would also refer to the case of U.S. versus
9 Smith and the Tarrallo case, U.S. versus Smith at page
10 1051 in particular.

11 With respect to the defendant's proposed 39,
12 the court's tentative is to refuse. There is a lack of
13 support for giving this instruction to the jury in this
14 case. The cases cited do not support giving this
15 instruction.

16 With respect to 40, the court would --
17 defendant's proposed 40, the court would also deny.

18 With respect to 41, the court would deny.
19 This instruction is not necessary. It is more
20 appropriately addressed in plaintiff's proposed 51 which
21 is based upon model jury instruction 5.9.

22 With respect to 42, I would hear argument from
23 both sides. I don't have a tentative on defendant's 42.

24 With respect to 43, the court would refuse as
25 worded, noting that the instruction appears incomplete

1 and inaccurate. In any event, I would not advise the
2 jury the Ninth Circuit has held. But I will hear
3 argument as to 43.

4 With respect to 44, I would also hear
5 argument. I question whether there is sufficient legal
6 support for giving this instruction, and I question
7 whether there is a factual basis for the instruction, in
8 any event. So I would hear argument on 44.

9 On 45, I would refuse as unnecessary. It is
10 repetitive and covered adequately by the other
11 instructions.

12 These appear to be the only disputed
13 instructions. As to the introductory instructions, both
14 sides essentially proposed the same instructions.

15 Mr. Robinson, before I turn to the defense,
16 I would ask you if the government has any questions or
17 clarification.

18 MR. ROBINSON: May I have a moment just to review
19 my notes, Your Honor?

20 THE COURT: Sure. I will take a couple minute
21 break, if you like, both sides. We will start at 9:30 as
22 soon as the jury is here.

23 MR. SAYRE: Your Honor.

24 THE COURT: Yes.

25 MR. SAYRE: If I could address the issue

1 regarding -- regarding jury instruction 33 because the
2 evidence is overwhelming --

3 THE COURT: Why don't I take a couple of minute
4 break, and then we will get to that. I will make sure
5 that we have at least five minutes before we start.

6 THE CLERK: This court is in recess.

7 (Brief recess.)

8 THE COURT: Mr. Robinson -- I am noting that both
9 sides are here -- any questions regarding the court's
10 tentative -- and I would state it is just a tentative --
11 or any clarification?

12 MR. ROBINSON: No, Your Honor. I think that, if I
13 may, I could just respond to the court's position.

14 With respect to government's instruction 36 as
15 modified, the government has no objection to the court's
16 modification but agrees with the court that the second
17 paragraph from defendant's instruction that refers to
18 whether the false statement went through the mail is
19 probably not necessary under the facts of this case and
20 in light of other instructions we have. And so I would
21 suggest that we don't use that second paragraph of
22 defendant's 42, but we use the first and the third
23 paragraphs which the court wanted used.

24 I would just note, Your Honor, that lack of
25 reliance was covered in a different government

1 instruction, but if the court prefers to consolidate it
2 into one, we have no objection to that. So we are fine
3 with that, Your Honor.

4 With respect to government's 43, the court, I
5 believe, indicated that the first paragraph seemed to be
6 redundant with other instructions, but the second
7 paragraph is okay. That is fine with the government,
8 Your Honor.

9 THE COURT: All right.

10 MR. ROBINSON: And then with respect to
11 government's instruction number 46, the third paragraph,
12 Your Honor was not convinced that the case law clearly
13 supported that third paragraph. And, frankly, Your
14 Honor, I have only quickly read the cases that we cited,
15 but I would invite the court's attention to a passage in
16 the Supreme court's decision in TSC Industries, which is
17 one of the cases we cited.

18 THE COURT: All right.

19 MR. ROBINSON: And, Your Honor, at page 2130 of
20 that opinion, next to headnote 1, the court says: "The
21 question of materiality, it is universally agreed is an
22 objective one involving the significance of an admitted
23 or misrepresented fact to a reasonable investor.
24 Variations in the formulation of a general test of
25 materiality occur in the articulation of just how

1 significant a fact must be, or, put another way, how
2 certain it must be that the fact would affect a
3 reasonable investor's judgment."

4 And so, Your Honor, I think that that does
5 support the third paragraph where it says the question is
6 whether it had a capacity or potential to influence the
7 person's decision.

8 The first part which says the test is not
9 whether somebody actually made a decision or lost money
10 based on the act, I think is well supported in the law,
11 including the Ninth Circuit instruction on securities
12 fraud. So mainly, this latter portion of the paragraph I
13 assume the court is concerned about --

14 THE COURT: Right.

15 MR. ROBINSON: -- about whether it had a capacity
16 or potential to influence a person's decision. And I
17 think that is supported by TSC Industries, in particular
18 the passage I just quoted before.

19 THE COURT: All right. Thank you.

20 Mr. Sayre, as to the court's tentative, I
21 would invite your response as appropriate.

22 MR. SAYRE: Yes, Your Honor. As you heard,
23 Mr. Robinson redundantly cited TSC Industries. That is
24 exactly where the quote from our jury instruction 33
25 comes from. It is replete throughout every district

1 court --

2 THE COURT: I read that case, and I found that
3 quote. The question in my mind is simply because there
4 is a statement in a case, does that support giving the
5 instruction, quoting that statement? I found not in this
6 instance.

7 MR. SAYRE: Your Honor, this involves a news
8 release. How could it be more appropriate, the total mix
9 instruction? If I could just please make the statements
10 here and go through this.

11 THE COURT: Sure.

12 MR. SAYRE: The following quotation is from 15
13 USCS --

14 THE COURT: Please, Mr. Sayre --

15 MR. SAYRE: Yes.

16 THE COURT: -- if you want a record, slow down.
17 The court reporter can't follow that, you reading
18 quickly.

19 MR. SAYRE: I just wanted to make sure I could get
20 the information in, but I will slow down. The following
21 quotation is from 15 USCS, Section 78(j), commentary
22 section of the United States Code Service 2007.

23 "To assert a viable section 10(b) claim,"
24 which is exactly what we are dealing with here, "the
25 plaintiff must establish a number of elements. First,

1 any misstatement or omission must be material. Whether a
2 particular misstatement or omission is material involves
3 a factual inquiry into whether there is a substantial
4 likelihood that an accurate disclosure would have been
5 viewed by a reasonable investor as having significantly
6 altered the total mix of information." Couldn't be much
7 more clear, that comes directly from the --

8 THE COURT: Correct. And you elaborate on this in
9 your proposed jury instructions, the argument with
10 respect to defendant's proposed jury instruction 33
11 contained in the defendant's filing at pages 37 through
12 40.

13 MR. SAYRE: Yes, Your Honor. And the key issue,
14 as I mentioned previously, is that this is clearly and
15 unequivocally a total mix case. If there is another case
16 that would be a total mix case above and beyond this one,
17 I would like to know about it because I don't know of
18 one --

19 THE COURT: As I stated in my tentative, your
20 witnesses can refer to total mix, you can argue total
21 mix, but it is not necessary or appropriate to instruct
22 the jury on total mix. A jury instruction using the
23 language total mix is not necessary or appropriate.
24 Materiality is adequately covered and more appropriately
25 covered by the government's proposed instruction 46.

1 MR. SAYRE: May I answer that?

2 THE COURT: In -- for example, in argument,
3 counsel for both sides could tell the jury, in deciding
4 materiality, you can consider all the facts and
5 circumstances presented by the evidence. That is what I
6 mean by total mix.

7 But please continue, Mr. Sayre, and then I
8 will give Mr. Robinson an opportunity to respond.

9 MR. SAYRE: What Mr. Robinson is clearly doing,
10 and it is unequivocal, he is citing half the materiality
11 definition of the case law being used. I see no logical
12 reason why that should be done just to prejudice the
13 defendant. That is clearly what is being done. Why
14 would we cite half of a quotation from a Supreme court
15 case law? That seems absurd and outrageous.

16 Now, it goes on -- and if you are questioning
17 whether or not it is in civil case law Ninth Circuit, it
18 clearly is because there is a long list. You cited U.S.
19 versus Smith. They cite TSC and Basic, and they quote
20 exactly the same quote that I quoted from the U.S. Code
21 Service.

22 And then we go on to the other case law which
23 is cited in the jury instruction itself, and I will turn
24 to that page. This is the government's exhibit. We have
25 U.S. versus Reyes, District court in the Ninth Circuit;

1 U.S. versus Smith, Ninth Circuit; U.S. versus Bringham,
2 Ninth Circuit; U.S. versus Margala, Ninth Circuit; U.S.
3 versus DiIanni. And those are the criminal case laws
4 that cite TSC and/or Basic, which is identical as far as
5 the issue of materiality.

6 My question is, why should we simply cut off
7 half the definition of materiality to support the
8 prosecution? It seems a bit outrageous because this is a
9 total mix case.

10 THE COURT: Thank you. Mr. Robinson.

11 MR. ROBINSON: Your Honor, this may take more than
12 a couple of minutes.

13 THE COURT: I am going to ask my clerk to check on
14 the jurors. A few minutes ago, I was advised that we
15 still had two jurors missing. I do not want to keep them
16 waiting. It is not necessary. So as soon as the jurors
17 are here, let me know, and we will start, Ms. Bradshaw.

18 Mr. Robinson.

19 MR. ROBINSON: Thank you, Your Honor. I just
20 wanted to say that in case I get cut off, I would like to
21 pick up later, if I have an opportunity.

22 Your Honor, the government made this point in
23 its motion in limine, and I would stress it again here.
24 The language that references total mix which appears in
25 numerous securities fraud cases is not disputed by the

1 government. We are not saying that that phrase does not
2 appear in the cases, Your Honor.

3 What we are saying, first of all, is that in
4 the context of the securities fraud charged in this case
5 which concerns a scheme to defraud involving false and
6 misleading investment opinions in which the information
7 which is false and misleading does not concern the
8 company being touted, namely, e-Connect, but instead
9 concerns the independence, objectivity, lack of conflict
10 or interest of the person, or in this case the
11 corporation that the person controls touting the stock,
12 that that presents a different context.

13 So the total mix analysis which the defendant
14 wants to use here which does not focus on whether or not
15 the omission or misleading statements in that -- in those
16 opinions about the defendant's objectivity, honesty and
17 lack of conflict of interest, if there is any total mix,
18 it goes to that information, Your Honor. It does not go
19 to all the other news releases that may have been out on
20 the Internet concerning e-Connect.

21 The problem with the defendant's analysis is
22 they take it so far as to say it is in the total mix,
23 begging the question, the total mix as to what? The
24 government submits that the only total mix that matters
25 here is the total mix of information which would reveal

1 whether or not defendant's opinions were misleading and
2 whether they were important and whether the misleading
3 information would have been important to an investor or a
4 potential investor reading those opinions.

5 The problem with defendant's analysis is
6 essentially he is claiming that if -- he can cite
7 thousands. He cited less than a hundred. But if he
8 could cite thousands and thousands and thousands of
9 articles on the Internet about e-connect as the total
10 mix, somehow that drowns out his fraudulent conduct in
11 presenting those investment opinions.

12 And I defy him to cite a single case in which
13 the court has ever recognized a defense to the kind of
14 securities fraud claim that we have here about a
15 fraudulent representation relating to the capacity and
16 the lack of conflict of interest of somebody touting the
17 stock, where any court has ever said, oh, you can defend
18 on materiality in a case like that by just talking about
19 how many other people are discussing, not you, but the
20 company.

21 So, Your Honor, not only do we think that a
22 jury instruction on total mix that would contemplate
23 allowing the defendant to argue that his fraud is drowned
24 out by the fact that other people wrote not about him,
25 not about IFR, but about e-Connect, misstates the law and

1 would mislead the jury.

2 And the absurd practical consequences of that
3 standard would be, how would you prove securities fraud
4 if you were dealing with Microsoft or Apple, a company in
5 which there is countless things on the Internet or in
6 publications at any given time? Would that be the total
7 mix in deciding whether a defendant charged with
8 securities fraud had engaged in a scheme to defraud by
9 giving investment opinions, simultaneously trading
10 against those investment opinions and not revealing what
11 he was doing? I would say no, Your Honor. That defies
12 common sense.

13 So the government has a fundamental objection
14 to the use of the total mix to contemplate information
15 that relates not to defendant and the IFR opinions and
16 whether or not they are false and misleading or
17 important, but instead to just what people are saying
18 about e-Connect.

19 There is no support that I have seen in the
20 thousands of pages I have read of those cases that he has
21 cited where a defense was ever raised and approved by any
22 court that allowed the total mix analysis to be applied
23 in that fashion. So that is our problem with total mix,
24 Your Honor.

25 THE COURT: Thank you. Mr. Sayre.

1 And I would ask -- I understand we still have
2 one juror missing; is that correct?

3 THE CLERK: Yes, Your Honor.

4 THE COURT: Yes, Mr. Sayre.

5 MR. SAYRE: Your Honor, his argument is totally
6 erroneous. First of all, the definition of materiality
7 is what we are dealing with here. Not his definition,
8 but TSC's definition by his own insistence. He is
9 cutting the definition in half, and he is justifying it
10 because he wants to call the fact that I omitted an
11 irrelevant fact a fraud. And since I committed
12 Mr. Robinson's fraud, I have no right to defend myself.
13 This is clearly what is being said. It is ludicrous.

14 Now, in regard to there being no precedent,
15 there is no precedent for a case like this. I challenge
16 Mr. Robinson to even find a case that vaguely represents
17 somebody who omitted a fact, who managed a company, had
18 an investment in the company he is writing about. It
19 doesn't exist because I read all the case law.

20 MR. ROBINSON: The court has already ruled to the
21 contrary, Your Honor, as the court may recall on his
22 motion about materiality.

23 MR. SAYRE: If I could speak to this issue?

24 THE COURT: Yes, Mr. Sayre.

25 MR. SAYRE: And then in regard to the materiality

1 issue, we have Apple Computers, he was asking how can
2 Apple Computers determine total mix in the case law, and
3 he says it doesn't exist. It is right here in Ninth
4 Circuit. They determined that clearly false and
5 misleading statements about the CEO and president were
6 not misleading because of the total mix of information on
7 the market, so that is clearly another false statement.
8 It is clearly here. It is Apple Computers, 672 F.Supp at
9 1561. It was dismissed by a motion to dismiss it. It --

10 THE COURT: I'm sorry. Would you state that cite
11 again?

12 MR. SAYRE: It was 672 F.Supp at 1561.

13 THE COURT: All right.

14 MR. SAYRE: And this case law is specifically what
15 he is saying does not exist. And it clearly does exist.

16 And in regard to the issues related to this
17 case, the total mix is the entirety of the case because
18 the defendant in any case such as this couldn't possibly
19 have the intent unless the omission was material, because
20 if it wasn't a material omission, he couldn't have had
21 the intent to influence the market. This is the whole
22 purpose of total mix.

23 He is trying to clearly misconstrue the law,
24 and he is trying to quote half of the total mix
25 definition, TSC and Basic, which are the two Supreme

1 court decisions that every district court and every Ninth
2 Circuit court uses as a definition of materiality in
3 cases where there were press releases released.

4 THE COURT: Thank you.

5 MR. ROBINSON: Your Honor, I could just respond to
6 Apple, and that is all I will say. Your Honor, I have
7 read the Apple case. The Apple case was a puffing case.
8 It was a case in which the securities fraud had to do
9 with vague and overly optimistic projections about how
10 certain Apple products would work.

11 And in that context, which is completely
12 different than the context we have here, the court looked
13 at whether the total mix of information that the market
14 knew about Apple's products would make them false and
15 misleading.

16 And so I would grant that if the question is
17 somebody has puffed up a description about a company's
18 product and in the total mix of the marketplace there is
19 ample information that is just puffing and would not
20 mislead anybody, then the total mix can apply. But that
21 is not the context which we are addressing in this case.
22 Apple provides no help to the defendant.

23 MR. SAYRE: Your Honor, if I could just make
24 one last statement in regard to this same issue.
25 Clearly, it still goes to intent. He is trying to

1 whitewash the Apple Computer situation. They stated very
2 clearly, "Lisa is going to be phenomenally successful in
3 the first year out of the chute."

4 THE COURT: Wait. Please slow down when you read
5 from a document for the reporter.

6 MR. SAYRE: Mr. Jobs, the CEO and president, and
7 the other principle executive for Apple Computers, made
8 the following two statements which they knew to be false:
9 "Lisa is going to be phenomenally successful in the first
10 year out of the chute." They knew that they couldn't get
11 even get this system operating at this point, and they
12 didn't even know if there was any possibility of
13 marketing this product. And this is in the case law.

14 Then the other statement that was made and
15 quoted in the Wall Street Journal, not some unknown
16 article, omitting a fact that somebody managed the
17 company and whatever remote theory that Mr. Robinson has
18 devised, "This division that developed Lisa is going to
19 make Apple's growth before this look small." They said
20 this knowing that it was not likely that they could even
21 successfully market this product. It was a clear and
22 intentional lie. It had nothing to do with puffing.

23 THE COURT: The court's tentative remains. The
24 court will give the government's proposed jury
25 instruction 46 and refuse the defendant's proposed jury

1 instruction 33 for reasons set forth in the court's
2 tentative and as further articulated by the prosecutor,
3 Mr. Robinson, this morning. I find his points are all
4 well taken and supported by the law.

5 The tentative will be filed and served as a
6 tentative along with a more thorough minute order
7 explaining the court's tentative on these issues.

8 We are still waiting for one juror. That
9 juror's family has confirmed that he should be here soon,
10 so it should be a couple of minutes. We will take a
11 break and then start as soon as that juror is here.

12 Thank you very much.

13 MR. ROBINSON: Thank you, Your Honor.

14 THE CLERK: This court is in recess.

15 (Brief recess.)

16 THE COURT: The jurors are all here, and we will
17 get started.

18
19 (The following proceedings were held in open court
20 in the presence of the jury.)

21
22 THE COURT: Good morning, ladies and gentlemen. I
23 note the presence of the jurors, counsel and parties for
24 both sides, and the witness has returned to the witness
25 stand.

1 Sir, I would remind you that you were
2 previously sworn and you are still under oath. Would you
3 state your name again for the record?

4 THE WITNESS: Carl R. Knudson.

5 THE COURT: Thank you, Mr. Knudson.

6 Mr. Sayre, please continue.

7
8 DIRECT EXAMINATION (Res'd)

9 BY MR. SAYRE:

10 Q We left off with a few questions regarding your
11 experience and such. In addition to your work with the
12 IRS and the U.S. Treasury Department as a special agent,
13 you worked with the CIA and Naval Intelligence as well,
14 did you not?

15 A Yes, I did.

16 MR. SAYRE: I think if the reporter might be able
17 to indicate where we left off, I am having trouble --

18 THE COURT: No, that is not appropriate, but I
19 believe yesterday when we adjourned, the witness had been
20 asked questions regarding 2291, Exhibit 2291.

21 MR. SAYRE: Oh, yes.

22 THE COURT: And he was discussing how 2291 was
23 prepared, the number of releases before the first IFR,
24 referring to page 3, 2291, and a redacted version of 2291
25 was admitted into evidence and permission was given to

1 publish it to the jury.

2 MR. SAYRE: Okay. Well, I am going to try to
3 figure it out because 2291 is several pages.

4 Q I will just start and you tell me if you have
5 answered these questions. Does your Exhibit 2291 list
6 other press releases issued by e-Connect and Prima
7 Capital during the same time period?

8 A Yes, they do.

9 Q And does your analysis indicate whether Silver
10 Screen Industries purchased or sold e-Connect stock
11 immediately before or after its second release?

12 A The second release from IFR occurred on March 1st,
13 2000, 6:03 a.m. in the morning, and the closest purchase
14 of Silver Screen stock occurred on the 28th,
15 February 28th, at 9:43 in the morning. So when you ask
16 immediate, I would say no.

17 Q And does your Exhibit 2291 show that Silver Screen
18 Industries subsequently sold their stock in e-Connect?

19 A Yes, they did. Look at page 3 of Exhibit 2291, and
20 the green shaded area indicates a sell of Silver Screen
21 stock on March 2nd. All of their holdings were sold
22 within about 30 minutes, between 11:00 o'clock --
23 11:00 o'clock on March 2nd.

24 Q Does your Exhibit 22291 show the price that the
25 stock was being sold at?

1 A Yes, it does.

2 Q Does your Exhibit 2291 show that the price of
3 e-Connect was falling from \$4.43 per share to
4 approximately \$3.5 per share during that same time
5 period?

6 A Yes, it does.

7 Q So after IFR released the March 1st, 2000 release,
8 did the price ultimately fall on March 2, 2000?

9 A Yes, it did.

10 Q Did Silver Screen make a profit from their sale of
11 e-Connect?

12 A Yes, they did.

13 Q Does your profit calculation coincide with the
14 profit number provided by Mr. Loveman?

15 A Yes. If you'd look at Exhibit 2291 and you look at
16 the last row colored in green, you will see in the
17 running proceeds without fees, because there is a profit
18 calculation of \$246,679.92.

19 Q And drawing your attention to 2291 at page 3, the
20 last row, does this row show a purchase of e-Connect
21 stock by Silver Screen?

22 A Yes, it does. The last two rows show that there
23 were approximately 80,000 shares of Silver Screen -- of
24 e-Connect purchased by Silver Screen.

25 Q And so would it be fair to say that Silver Screen

1 purchased e-Connect stock back -- I'm sorry, let me
2 restate that.

3 Would it be fair to say that Silver Screen
4 purchased the e-Connect stock back the day after it had
5 sold the e-Connect stock?

6 MR. ROBINSON: Objection. Leading.

7 THE COURT: Sustained.

8 Q BY MR. SAYRE: What occurred in the trading in those
9 two days, the March 2nd and the March 3rd trades?

10 A March 2nd, Silver Screen sold their complete
11 holding in e-Connect stock, and then March 3rd -- let me
12 clarify that. They sold 96,100 shares on March 2nd. And
13 on March 3rd, they purchased 80,000 shares of e-Connect
14 stock.

15 Q Was Silver Screen purchasing stock that was
16 increasing in value?

17 A The purchase on the 3rd shows that the stock was
18 selling at -- or was purchased at \$4.6562 per share, and
19 the second purchase of 56,900 shares was purchased at
20 \$4.6875, so the stock was rising at that point.

21 Q So the difference between the shares was 96,100
22 shares were sold, 80,000 shares were purchased. What was
23 the total sell and buy amounts? What was the total
24 amount of the sale, and what was the total amount of the
25 buy-back on the 3rd?

1 A Well, the difference between 96,180, just as a
2 point of clarification, there were additional purchases
3 of e-Connect stock a few days later which brought the
4 total holding up to 81,200.

5 I have done a rough calculation, and I think
6 the difference is 14,900 shares that was the difference
7 between when they sold it at 96,100 and when they
8 purchased it back at 81,200.

9 Q So the difference in purchase price and sale price
10 in total, is that calculated on the chart? In other
11 words, the sale on March 2nd was for what total gross
12 amount?

13 A It was 246,000. Those were the sells.

14 Q And what was the repurchase total?

15 A The repurchase totals were 266,000 plus 7000.
16 About 273.

17 Q So significantly higher to buy less stock?

18 A Yes.

19 Q And what was the dollar amount per share that
20 Silver Screen purchased e-Connect stock for on March 6,
21 2000?

22 A If you go to it page 4 --

23 Q Page 4, yes?

24 A -- of Exhibit 2291, you will see color coded purple
25 right in the middle of the chart. And there are

1 two purchases on March 6th for 500 shares and 700 shares,
2 and they were purchased at \$7.10 per share.

3 Q Therefore, Silver Screen was continuing to purchase
4 e-Connect stock despite the fact that the market on the
5 stock was rising?

6 MR. ROBINSON: Objection, Your Honor. Leading.

7 THE COURT: Sustained.

8 Q BY MR. SAYRE: What was Silver Screen doing under
9 these circumstances when it was purchasing stock for a
10 greater value? Can you simply describe what was
11 happening at that time in regard to the pricing and the
12 increase in pricing and what Silver Screen Industries
13 was doing regarding its trading activity?

14 A Well, the -- Exhibit 2291 shows that Silver Screen
15 was continuing to purchase a small amount at a higher
16 rate.

17 Q The total buy-back was significantly greater than
18 the sale previously?

19 MR. ROBINSON: Objection. Leading.

20 THE COURT: Sustained.

21 Q BY MR. SAYRE: All right. Was the sale on March 2nd
22 significantly less than the purchase price on March 3rd?

23 A Yes. If you look at the colored shaded green on
24 page 3, you can see that the sales of Silver Screen were
25 at the top of \$4.4 per share, and the last entry is 3.5

1 for 33,700 shares. So they are -- Silver Screen is
2 selling stock in a declining market or at least at a
3 declining profit.

4 And when they then start repurchasing the
5 following day, they are buying it back at \$4.06, or 60
6 cents per share, which is an indication that the market
7 is on the upswing again and they are paying more.

8 Q So this -- was this sell on March 2nd and there is
9 a buy-back on March 3rd strategically or mathematically
10 practical?

11 MR. ROBINSON: Objection. Leading, vague and
12 ambiguous. Calls for speculation as to strategy.

13 THE COURT: Sustained.

14 Q BY MR. SAYRE: Would this have led to a loss of
15 potential profit in the future?

16 A Yes.

17 MR. ROBINSON: Objection. Ambiguous.

18 THE COURT: Sustained. Lack of foundation as
19 well.

20 Q BY MR. SAYRE: When was the next IFR release,
21 according to your Exhibit 2291?

22 A The next release after March 1st was on March 3rd.
23 That is at the top of page 4 on Exhibit 2291.

24 Q According to this exhibit, where were the other
25 press releases -- were there other press releases issued

1 during that same period of time?

2 A Well, there was the press release we just talked
3 about on March 1st.

4 Q Oh, no. I am referring to other companies' press
5 releases.

6 A Oh, yes. Yes, there were. I mean, there were --

7 Q Where would we find that information?

8 A On March 3rd, if you just look at the date and you
9 look at the press releases associated with that date, you
10 will see that there are a number of businesses issuing
11 releases with respect to the e-Connect stock.

12 Q Could you read those press releases for the jury,
13 which ones were released on that same day?

14 A I -- I can read you the headline, but I --

15 Q Yes, that would be preferable.

16 MR. ROBINSON: Your Honor, I would object that the
17 underlying press releases haven't been offered into
18 evidence or were admitted.

19 THE COURT: Sustained. And Exhibit 2291 has been
20 admitted into evidence and speaks for itself.

21 Q BY MR. SAYRE: We will continue while we are putting
22 together the appropriate information for the exhibit.
23 What was the --

24 MR. SAYRE: We are going to have the same issue on
25 this question, then. Actually, almost all these next

1 questions pertain to that exhibit. So we will -- I think
2 in just a few minutes we will have this --

3 Your Honor, I would like to ask the court to
4 introduce Exhibit 2001.

5 THE COURT: 2001 will be marked for
6 identification.

7 MR. SAYRE: Thank you, Your Honor.

8 Q And, Mr. Knudson, you are reviewing the total mix
9 at this time; is that correct? Do you have a copy of
10 it --

11 A Yes. I am reviewing the press releases that are
12 marked under Exhibit 2001.

13 Q And have you previously reviewed those press
14 releases?

15 A Yes, I have.

16 Q And those press releases you currently have in
17 front of you are accurate representations of the previous
18 press releases you had reviewed?

19 A Yes. These are the press releases that are
20 evidenced by the Bates number on Exhibit 2291.

21 Q Government discovery?

22 A Yes. And also the press releases that I recovered
23 from the Internet that I previously talked about.

24 Q That have been stipulated to, I believe.

25 And the charts, these charts represent a

1 synopsis of the press releases that you have currently as
2 Exhibit 2001; is that correct?

3 A Yes.

4 MR. SAYRE: Your Honor, I would like permission to
5 introduce Exhibit 2001 into evidence.

6 THE COURT: Any objection?

7 MR. ROBINSON: No objection, Your Honor.

8 THE COURT: Admitted.

9 Q BY MR. SAYRE: Mr. Knudson, were we going to
10 reference the first bar chart on February 29, or which
11 exhibit were we referring to?

12 A I believe if you look on page 4 of 2291, we are
13 talking about a bar chart release with Bates number 3085.

14 Q Okay. 3085. All right. We are locating that.

15 Could we continue without the actual article,
16 possibly? What is the headline for barchart.com on that
17 particular date?

18 A Historical opinion for e-Connect. I recall this
19 release if you wish to ask questions about it.

20 Q It is the March 3rd bar chart that you were
21 referring to in the chart?

22 A Yes. I have a copy of it if you would like.

23 Q Possibly that would be best. We will have to get
24 it for you.

25 MR. SAYRE: Your Honor, if I could ask the clerk

1 to bring the copy.

2 THE COURT: Yes.

3 MR. SAYRE: We seem to have -- this is March 6.
4 This is actually the Wall Street Directory on March 3rd,
5 so I will project that. There must have been some type
6 of cross-reference.

7 MR. REED: Returning this to the clerk, Your
8 Honor, to give to the witness.

9 THE COURT: Okay. Thank you.

10 Q BY MR. SAYRE: All right. Then in regard to the
11 March 3rd release, the Wall Street Directory, which is
12 the parent company for barchart.com, so there is no
13 confusion in that regard --

14 MR. ROBINSON: Objection. The question just
15 stated facts not in evidence.

16 THE COURT: Sustained. And the jury should
17 disregard the question.

18 Please, Mr. Sayre, simply ask a question
19 without testifying.

20 Q BY MR. SAYRE: In regard to this opinion from the
21 Wall Street Directory, could you describe what this
22 opinion states and what the statistics represent?

23 MR. ROBINSON: Objection. Document speaks for
24 itself, lack of foundation.

25 THE COURT: Sustained on both grounds.

1 Q BY MR. SAYRE: All right. Does this Wall Street
2 Directory of March 3rd exhibit list buy recommendations
3 for e-Connect stock?

4 MR. ROBINSON: Same objection. The document
5 speaks for itself.

6 THE COURT: Sustained.

7 MR. SAYRE: There must be something that
8 Mr. Knudson can say about the chart?

9 MR. ROBINSON: If he provides the proper
10 foundation, Your Honor, I won't object.

11 THE COURT: Noted.

12 Q BY MR. SAYRE: We already did that, but I will do
13 that again.

14 Was this taken from the government's exhibit?

15 A Yes, it was.

16 Q And this is something that has been stipulated to
17 by the government?

18 A I understand --

19 MR. ROBINSON: Objection. Ambiguous as to what
20 the stipulation encompassed. The court has the
21 stipulation.

22 THE COURT: Sustained.

23 And the jury should disregard the question,
24 and the answer is stricken.

25 Q BY MR. SAYRE: is this document taken from

1 Exhibit 2001?

2 A Yes.

3 Q What does it say?

4 MR. ROBINSON: Objection. The document speaks for
5 itself, Your Honor.

6 THE COURT: Sustained.

7 MR. SAYRE: Your Honor, can I ask the jury to read
8 it, and we will just sit quietly while the --

9 THE COURT: The jury will have the exhibits that
10 have been admitted into evidence to read and review
11 during deliberations.

12 MR. SAYRE: Your Honor --

13 THE COURT: Please move on.

14 Q BY MR. SAYRE: All right. In Exhibit 2291, there is
15 a reference to Prima Capital on March 3rd. Does that
16 document have a Bates number?

17 A Yes, it does.

18 Q You may want to -- on each of these, it may be more
19 efficient if we just take your exhibits, Mr. Knudson,
20 because the number of articles are so time-consuming.

21 MR. SAYRE: Your Honor, could I ask the clerk on
22 all these issues, it would just expedite things
23 considerably.

24 THE COURT: What do you want the clerk to do?

25 MR. SAYRE: To bring all of Mr. Knudsen's exhibits

1 up because we are having such a hard time locating them.

2 THE COURT: Sure. As Mr. Knudson hands the clerk
3 the exhibits, she will bring them up to you as directed.

4 MR. SAYRE: Oh. All of them? We have all of
5 them. We are just having trouble locating the reference.

6 THE COURT: Do you want her to bring all the --

7 MR. SAYRE: No, just the individual references.

8 THE WITNESS: Well, these are in order.

9 MR. SAYRE: These are in order as well. I could
10 take a second copy and try to locate them at the same
11 time. But I think you maybe have more familiarity with
12 the exhibits. I don't know.

13 THE WITNESS: Well, I have Exhibits 2531.

14 Q BY MR. SAYRE: Okay. Whatever you have would be
15 great.

16 A It is two pages.

17 Q Now, this document is part of government's
18 evidence, is it not?

19 A Yes, it is.

20 Q It has previously been provided to the government
21 in support of our Exhibit 2291?

22 A Yes.

23 Q Does the March 3rd -- I seem to have a lot of --
24 this is -- there is a lot of disorganization here. Now,
25 we are referring to a March 2nd release. I think we are

1 lost. I know. That is the problem.

2 A No. The release says March 3rd at the top.

3 Q Yes, it does. So let's -- does this document, what
4 does this document reflect? What is the title of this
5 document?

6 A This is the e-Connect to Pilot Island Establish
7 Unique. So if you look at the headline at the top of the
8 page, March 3rd, the headline appears on my Exhibit 2291
9 and if you look at the second page of that exhibit, you
10 will see that that press release was issued by Prima
11 Capital for e-Connect at the bottom of the page.

12 Q So the titles at the left side of the chart reflect
13 the media that was extant at that particular date related
14 to e-Connect; is that correct?

15 A Yes.

16 Q Could you please look at Exhibit 2291 and tell the
17 jury when Silver Screen Industries began purchasing
18 e-Connect stock on March 3rd?

19 MR. ROBINSON: Objection to the form of the
20 question, Your Honor, as ambiguous. He used the phrase
21 "began purchasing." Does that mean execution of an order
22 or placement of an order? And the timing is important.

23 THE COURT: Sustained.

24 Q BY MR. SAYRE: All right. Mr. Knudson, could you
25 please look at Exhibit 2291 and tell the jury at what

1 point in time on that particular day the trading in
2 e-Connect began for Silver Screen Industries?

3 A Yes. If you look at the bottom of page 3, color
4 coded purple, you will see that the first purchase of
5 e-Connect stock on the 3rd was right around 1:00 o'clock.

6 Q Was this after the other releases or before the IFR
7 release?

8 A Well, it was after the March 1st release, and it
9 was before the March 3rd release.

10 MR. REED: Your Honor, I wanted to just return
11 this original exhibit to the witness so we don't lose it.
12 That was the press release, March 3rd.

13 Q BY MR. SAYRE: So what time did the March 3rd release
14 actually get released? What time was that, according to
15 the chart?

16 A On page 4, the first row at the top of page 4,
17 there is an IFR release on March 3rd at 1458 hours, which
18 is right around just before 3:00 o'clock.

19 Q Would this time difference make any difference to
20 your analysis?

21 A No.

22 Q So if Silver Screen sold all 96,100 shares of
23 e-Connect on March 2nd, it had maximized its profit
24 potential that it would have gained had it held onto the
25 stock?

1 MR. ROBINSON: Objection. Lack of foundation.
2 Calls for speculation.

3 THE COURT: Sustained. Lack of foundation,
4 speculation.

5 Q BY MR. SAYRE: If Silver Screen Industries had not
6 made this sale on March 2nd and had sold all the
7 e-Connect stock on March 9th and 10th, would it have
8 made considerably more money?

9 MR. ROBINSON: Objection. Lack of foundation.
10 Calls for speculation.

11 THE COURT: Overruled.

12 THE WITNESS: The answer is yes, the e-Connect
13 stock, all 96,100 shares, were sold in a declining market
14 on March 2nd. Had they kept the 96,100 shares, they
15 would have had 96,100 shares to sell on March 9th and
16 10th. At that price, they would have sold them at
17 \$19.75. So clearly, there is a loss of potential profit
18 by them selling all their shares on March 2nd. The
19 profit was roughly \$290,000 that they lost by selling
20 their shares on the 2nd.

21 Q BY MR. SAYRE: Exhibit 2291 shows that after March 6,
22 there was a purchase of 1200 shares of e-Connect, the
23 total holdings are 81,200; is that correct?

24 A That's correct.

25 Q Did Silver Screen release an opinion immediately

1 before or after they purchased these 1200 shares?

2 A No, they didn't.

3 MR. ROBINSON: Objection. The question said
4 Silver Screen.

5 THE COURT: Sustained.

6 Q BY MR. SAYRE: Did I purchase shares for Silver
7 Screen made before or after they purchased -- or I
8 purchased the shares for Silver Screen -- all right. I
9 am going to have to make a moment to get this the way --

10 The shares purchased for Silver Screen on
11 March 6th -- did I purchase Silver Screen industry shares
12 for Silver Screen -- I don't know.

13 This is -- these little word puzzles are
14 getting a little silly.

15 MR. ROBINSON: Objection, Your Honor.

16 THE COURT: Sustained.

17 Q BY MR. SAYRE: Did IFR issue an opinion immediately
18 before or after the 1200 shares were purchased for
19 Silver Screen Industries?

20 A No.

21 Q So when was the next IFR opinion released? And
22 would you point that out on the Exhibit 2291.

23 A Page 4, near the bottom, color coded in a darker
24 purple, I would say maybe call it blue, there is --
25 releasing firm is called IFR, and the date is March 8th

1 at 6:15 in the morning.

2 Q Okay. Thank you. Were other releases listed on
3 Exhibit 2291 on or near the same day that IFR released
4 their opinion?

5 A Yes.

6 Q Did barchart.com and Prima Capital issue releases
7 during the period before and after the release by IFR?

8 A Yes, they did.

9 Q And was barchart.com on their March 7th release
10 shown on Bates number 3084 again indicating a 100 percent
11 buy recommendation for short, medium and long-term
12 investment?

13 MR. ROBINSON: Your Honor, objection. The
14 document speaks for itself. He is just asking the
15 witness to adopt his characterization of it.

16 THE COURT: Sustained.

17 Q BY MR. SAYRE: Mr. Knudson, could you read the
18 document for the jury?

19 THE COURT: The objection has been sustained. The
20 document, Exhibit 2291, has been admitted into
21 evidence --

22 MR. SAYRE: I am going to briefly consult --

23 THE COURT: -- and the jury can read the document
24 in the jury room during deliberations if they choose to.

25 Q BY MR. SAYRE: Did you ultimately render an opinion

1 in this case based on the total mix of information of
2 these press releases?

3 A Yes.

4 Q And after the fourth opinion from IFR, based on
5 your analysis as shown on Exhibit 2290 and 2291, did
6 Silver Screen immediately buy or sell shares of
7 e-Connect, according to the two charts?

8 A Immediately? No.

9 Q After March 8th, did barchart.com continue to
10 release 100 percent buy recommendations on March 8th and
11 9th?

12 MR. ROBINSON: Objection. Document speaks for
13 itself.

14 THE COURT: Sustained.

15 Q BY MR. SAYRE: Did the barchart.com releases -- all
16 right.

17 Did the barchart.com releases from the 8th and
18 9th of March indicate that e-Connect prices were still
19 rising?

20 MR. ROBINSON: Objection. Compound. The
21 documents will speak for themselves.

22 THE COURT: Sustained on both grounds.

23 Q BY MR. SAYRE: Are there samples of press releases
24 that you designate in your chart which you used to
25 render your opinion?

1 A Yes.

2 Q Which ones?

3 A Well, all of them that are listed on 2291, but in
4 particular, the references to Bates number 3084 and 3085
5 are examples of releases known as bar chart.

6 Q And one of those on March 3rd, I believe, was that
7 Wall Street Directory?

8 A No. The bar charts are dated March 8th and
9 March 7th.

10 Q And could you read the samples of the press
11 releases in your chart that allowed you to render this
12 final opinion?

13 MR. ROBINSON: Objection, Your Honor. First, they
14 speak for themselves, and if he is talking about all the
15 releases that rendered his opinion, there is 70 or
16 something of them there, so I would object on 403
17 grounds.

18 THE COURT: Sustained on both grounds. Also,
19 asked and answered. He did -- he previously responded to
20 the question, which press releases did you use in
21 arriving at your opinion? He answered that question.

22 MR. SAYRE: All right.

23 Q BY MR. SAYRE: Exhibit 3086 indicated that e-Connect
24 opened on March 9th at \$20.88 and closed at \$14.50; is
25 that correct?

1 MR. ROBINSON: Objection, Your Honor. The
2 document speaks for itself, and it is a leading question.

3 THE COURT: Sustained on both grounds.

4 Q BY MR. SAYRE: Did Silver Screen at some point sell
5 their holdings in e-Connect?

6 A Yes, they did.

7 Q And on what dates?

8 A On March 9th, they sold all of their holdings
9 except for 1200 shares. On March 10th, they sold their
10 remaining shares of 1200.

11 Q On page 5, there is -- actually, there is a Pacific
12 Equity release regarding e-Connect dated March 10th.
13 Does this release reference Bates numbers?

14 A Yes.

15 Q And what Bates numbers would those be?

16 A It is 2344 and 2345.

17 MR. SAYRE: Your Honor, permission to publish?

18 MR. ROBINSON: Your Honor, may I have a moment? I
19 am not sure we have that in the defense exhibit that we
20 received.

21 THE COURT:

22 MR. ROBINSON: Have an opportunity to check it
23 before we take a position.

24 THE COURT: Yes, Mr. Chavez.

25 THE WITNESS: Can we take a five-minute break?

1 THE COURT: Absolutely. We will take a ten-minute
2 break now until 10:50. The jurors should remember not to
3 discuss this case or anything related to this case.
4 Thank you.

5 All right. Thank you. We will take a
6 ten-minute break as well. Thanks.

7
8 (The following proceedings were held in open court
9 outside the presence of the jury:)

10
11 THE COURT: In the trial, both sides are present,
12 and we will call in the jury.

13 MR. ROBINSON: Your Honor, may I just --

14 THE COURT: Yes.

15 MR. ROBINSON: I think we are getting to the point
16 where I would expect the defendant to ask Mr. Knudson for
17 his opinion. And we had orders yesterday about certain
18 areas where Mr. Knudson could not render an opinion, and
19 I would like to avoid a situation where I am jumping up
20 and objecting.

21 So perhaps the defendant could let us know
22 what the opinion is -- or what the question will be about
23 the opinion so we can deal with that before the jury
24 comes out.

25 THE COURT: Your point is well taken.

1 Mr. Sayre, could you summarize the opinions
2 that you would ask --

3 MR. SAYRE: Yes, Your Honor.

4 THE COURT: -- the witness for?

5 MR. SAYRE: Yes. I would just like to refer to
6 Rule 704A which states, " Expert's opinion is reliable and
7 helpful" --

8 THE COURT: Please slow down when you read. I
9 have 704 in front of me, so it is not necessary to read
10 it. Just respond to my question at this time. What
11 opinions will your expert be giving?

12 MR. SAYRE: Well, the first opinion is, did you
13 see any patterns of fraud that resembled a market
14 manipulation scheme by Silver Screen?

15 MR. ROBINSON: Can I address these one at a time,
16 Your Honor? Or we can list them.

17 THE COURT: I would like to have a list of the
18 opinions.

19 Did you see any patterns of fraud that showed
20 that Silver Screen engaged in market manipulation; is
21 that correct?

22 MR. SAYRE: Yes, Your Honor.

23 THE COURT: Then, what is the second opinion?

24 Mr. Knudson, you can have a seat if you wish.
25 You don't need to remain in the witness stand.

1 MR. SAYRE: Then there, was there a pattern of
2 withdrawals from Silver Screen Industries' account at
3 that would be considered an indication of fraud? That
4 would be the second opinion.

5 THE COURT: Okay. Any other opinions, Mr. Sayre?

6 MR. SAYRE: I believe there is one other.

7 THE COURT: Okay. That is from Mr. Knudson.

8 MR. SAYRE: And then the other would be, after
9 reviewing all the discovery evidence in this case, what
10 have you concluded?

11 THE COURT: And what is he going to say?

12 MR. SAYRE: What are you going to say?

13 THE WITNESS: That Silver Screen was following the
14 market in their trading activity.

15 THE COURT: Any other opinions?

16 MR. SAYRE: I believe that's it, Your Honor.

17 THE COURT: All right. What is the government's
18 response or position?

19 MR. ROBINSON: Your Honor, some of this was the
20 subject of the government's motion in limine, so I will
21 refer to that and also make an additional argument.

22 With respect to trading patterns on the
23 issue -- on the opinion, did you see patterns of fraud
24 that show that Silver Screen engaged in market
25 manipulation, if the -- first of all, we had a Rule 16

1 objection in that the disclosure letter for Mr. -- with
2 respect to Mr. Knudson stated that conclusion but never
3 described what patterns he would be referring to so that
4 we would have an opportunity to analyze them and decide
5 whether that testimony was consistent with the pattern,
6 had a proper foundation, or could otherwise be
7 challenged.

8 And if the court looks at the Knudson letter,
9 there is no disclosure of any particular patterns. And
10 in the charts that he has given us, I don't think there
11 is anything on those charts which would, you know, circle
12 something or and highlight something that said there is a
13 pattern. So first we have a Rule 16 objection.

14 Secondly, the issue in this case is securities
15 fraud with respect to the investment opinions issued by
16 Mr. Sayre in the name of IFR. It is not that his trading
17 in the sense of buying and selling e-Connect stock in the
18 Silver Screen account itself caused a market
19 manipulation. For example, if he owned 50 million shares
20 and bought and sold it and manipulated the market, that
21 would be something else.

22 But we have never claimed, it is not in the
23 indictment, we have never claimed that his purchase and
24 sales of shares separate and apart from the opinions
25 caused a market manipulation.

1 So I would say that that just doesn't go to a
2 relevant issue or it is outweighed under 403, and it
3 would be confusing to the jury.

4 I have a similar objection to the second
5 opinion, which was, was there a pattern of -- I think it
6 was transactions in the account that would be indicative
7 of fraud? Here, I think he is talking about Silver
8 Screen's bank account.

9 And we made a Rule 16 objection in our motion
10 in limine that the Knudson Rule 16 letter failed to
11 identify any bank account patterns or explain how they
12 would support that conclusion, so we have a rule 16
13 objection.

14 Secondly, Your Honor, we haven't contended in
15 this case that something that he did with his bank
16 account itself constituted fraud, plus it would be very
17 confusing and ambiguous as to what is meant by fraud.
18 Are we talking about check kiting? What are we -- loan
19 fraud? I mean, the only real relevance of the bank
20 accounts here is that the money to purchase and sell the
21 stock flows through the bank account, and the
22 government's position is Mr. Sayre controls the bank
23 account.

24 Beyond that, I don't see how an expert opinion
25 on an indicia of fraud or lack thereof in the bank

1 account is helpful to the jury in deciding any of the
2 issues in this case.

3 THE COURT: Evidence has been introduced as to
4 withdrawals from bank accounts and transfers to the Bank
5 of Montreal. From the government's perspective, what is
6 the relevance of that evidence?

7 MR. ROBINSON: Because I don't know what pattern
8 Mr. Knudson is going to refer to, it is hard for me to
9 address that. If the Rule 16 --

10 THE COURT: Independent of Mr. Knudson from the
11 government's perspective.

12 MR. ROBINSON: From the government's perspective,
13 the transfer of funds offshore was indicative of
14 defendant's scheme and that he wanted to profit from his
15 securities fraud and then make the proceeds less
16 available to be pursued by the SEC or law enforcement and
17 also make it more difficult to trace his relationship
18 with those proceeds.

19 So if Mr. Knudson is going to specifically
20 talk about those issues, I suppose that would be okay.
21 But I simply can't tell from the Rule 16 disclosure
22 whether that is the focus of his analysis or not, and I
23 don't know -- I don't know how he renders an opinion on
24 that either, but that is a separate issue.

25 THE COURT: All right. And what about the third

1 opinion where Mr. Sayre indicated that he would ask
2 Mr. Knudson, after reviewing all of the discovery, what
3 have you concluded, and the response would essentially be
4 that Silver Screen was following the market in its
5 trading?

6 MR. ROBINSON: First of all, I am not sure what
7 following the market means. If it means that they bought
8 and sold at market prices, I don't see how that is
9 helpful to the jury or particularly relevant to the case.
10 So the opinion itself to me is simply unclear what that
11 is and how it has any probative value in this case.

12 THE COURT: All right. Perhaps we can begin with
13 the third -- the defendant's response to the government's
14 objection to the third opinion that Mr. Knudson concluded
15 that Silver Screen was following the market in their
16 trading.

17 What does he mean by that, and how is it
18 relevant to issues in this case.

19 MR. SAYRE: Right, Your Honor. It is in
20 contradiction to the statement that Silver Screen
21 Industries' trades were based on IFR's opinions. It was
22 based on the market at the time, the press releases being
23 released by e-Connect and all the other press releases
24 being released concurrently. It wasn't based on IFR's
25 releases, which I believe is the government's theory. If

1 it is not, I don't understand this case at all.

2 MR. ROBINSON: There was no Rule 16 disclosure
3 showing how that conclusion is based on any reasons. And
4 first, I don't -- I don't follow. But there certainly
5 was no Rule 16 disclosure explaining how he was going to
6 arrive at that opinion following the market and how that
7 somehow negates that the defendant was taking profits in
8 the rise in the market after he issued those opinions.

9 I don't know how he arrives at that
10 conclusion, Your Honor, because it has never been
11 explained what the basis for that conclusion is.

12 MR. SAYRE: Your Honor, it is not a contention
13 that we weren't taking profits. I think that is pretty
14 self-evident. It is the contention that Mr. Robinson
15 says that I omitted I managed the company in order to
16 pump up the stock and sell it at increased value,
17 artificially raising the price of the stock. Again, I am
18 assuming this is his theory. It may be something else.

19 THE COURT: And you are presenting this evidence
20 to rebut an argument of intent to deceive?

21 MR. SAYRE: Yes, Your Honor, entirely.

22 THE COURT: Was this disclosed in the Rule 16
23 expert witness summary, this opinion?

24 MR. SAYRE: I don't have --

25 MR. ROBINSON: I have attached the letter -- Your

1 Honor, I have attached the Rule 16 letter to my motion in
2 limine.

3 THE COURT: With respect to this Exhibit 1 to the
4 government's motion, the second full paragraph refers to
5 an opinion, but it is unclear because it doesn't identify
6 the chart. And it merely says Mr. Knudson will explain
7 the chart and what it shows. The chart includes the time
8 line of dissemination of total mix documents. Well, the
9 witness has done that with 2291.

10 Then, the second opinion as set forth in the
11 third paragraph that Mr. Knudson will discuss common
12 stock frauds, yesterday I indicated my ruling that that
13 would not be relevant or admissible.

14 But the third paragraph goes on to state that
15 Mr. Knudson will testify of about trading patterns of
16 Silver Screen based on the charts vis-a-vis IFR releases;
17 namely, that the pattern is not consistent with the pump
18 and dump scheme, a scalping scheme or a market
19 manipulation scheme. The last scheme being the relevant
20 scheme, market manipulation.

21 He will testify about the implications of
22 trading of stock in what is known as the long position,
23 etcetera. He will testify that the positions Mr. Sayre
24 took in e-Connect were long positions and why the fact
25 patterns of trades are in ways inconsistent with a person

1 who is committing a stock scheme.

2 MR. ROBINSON: That, Your Honor, does not tell us
3 what the patterns are or what the reasons are that they
4 support his conclusion. It tells when he is going to
5 testify about, but it doesn't tell us how he arrives at
6 that. And that is what a Rule 16 disclosure is supposed
7 to do.

8 THE COURT: It is supposed to disclose in at least
9 summary form the reasons or the basis of the opinion?

10 MR. ROBINSON: Yes, Your Honor.

11 THE COURT: What is the remedy for failure to
12 fully comply with Rule 16? Is it exclusion?

13 MR. ROBINSON: Well, the court has discretion to
14 fashion the remedy, obviously. And the remedy can vary
15 from exclusion, and I have cases supporting that, to
16 requiring the defense to make full and proper disclosure
17 under Rule 16 and giving the opportunity for the
18 government to have that information and evaluate it
19 before it has to commence its cross-examination of the
20 witness.

21 In this case, Your Honor, we have made a big
22 deal about Rule 16, and the court was very clear that she
23 wanted Rule 16 compliance. This is what we have, and
24 they have never supplemented it. I made my motion in
25 limine pointing out these problems. I filed the motion

1 in limine on Monday, and there has been no effort by the
2 defense to address the shortcomings in the Rule 16 letter
3 by giving us a description of those patterns and the
4 bases and the opinions that the witness would rely on.

5 So now, here we are, soon, I'm presumably
6 going to begin my cross, and I don't have that
7 information. I don't think that is what Rule 16
8 contemplates.

9 THE COURT: The Rule 16 letter, Exhibit 1 to the
10 government's motion, is a letter by advisory counsel
11 dated June 24th of 2008. After receiving this letter,
12 did the government object to the defense that this
13 June 24th letter was inadequate and did the government
14 seek, Mr. Robinson, a more full disclosure?

15 MR. ROBINSON: I did not at that time, Your Honor.
16 I raised it in my motion in limine on Monday, which I
17 thought was sufficiently in advance. And there would
18 have been sufficient time for the defense to provide me
19 with that information before these witnesses testified.

20 THE COURT: Let's continue down the letter.

21 The last paragraph on page 1 refers -- states
22 Mr. Knudson will testify that Exhibit blank is called the
23 total mix analysis. And Mr. Knudson will testify
24 regarding the timing of trading patterns exhibited by the
25 data. And then Mr. Knudson will testify that in light of

1 his experience, it is not statistically possible or
2 possible in any other way taking into consideration the
3 total mix of information about e-Connect released on the
4 world market to determine or forensically measure the
5 impact of the inclusion or exclusion of Silver Screen in
6 the safe harbor, et cetera.

7 I already addressed this yesterday, and I
8 excluded this opinion.

9 Then, continuing on the second page, the first
10 full paragraph, it states Mr. Knudson will also testify
11 about his analysis of the Silver Screen corporate bank
12 account and will testify about the pattern of deposits
13 and disbursements from Silver Screen account. And
14 finally, Mr. Knudson will testify as to the use of
15 offshore accounts.

16 Mr. Sayre, what is your response to the
17 government's objection to the opinions on grounds that
18 the Rule 16 disclosures were insufficient, they merely
19 indicated a conclusion or an opinion without stating the
20 basis, and, furthermore, as to the first and second
21 opinions that you have identified, that they are not
22 relevant, or if they have some relevance, it is minimal
23 and substantially outweighed by other factors in 403?

24 MR. SAYRE: Well, Your Honor, I assume, at least
25 from my understanding of Rule 16 disclosures, that it is

1 supposed to be a summary of the information being
2 provided. If he wanted the entire line of questions and
3 answers, we certainly didn't get that from the
4 government.

5 It is very clearly stated, it is very clearly
6 synopsized, and it definitely gives a summary of the
7 basis that this information will be -- and the charts
8 also which have all the information relevant to the
9 summary. So it has a substantial amount of supporting
10 information.

11 THE COURT: The charts may give the basis, and the
12 letter may indicate the area of the opinion, but the
13 letter doesn't state the opinion. As Mr. Robinson
14 pointed out, neither the court nor the government knows
15 what opinion your expert will state regarding patterns of
16 fraud or that he didn't see any patterns of fraud to
17 indicate market manipulation. That statement doesn't
18 tell the court anything or, more importantly the
19 prosecution.

20 And the charts, when considered with that
21 statement, don't advise the prosecution of what the
22 witness is going to say in this regard. Same thing with
23 patterns of withdrawals from bank accounts.

24 But what is your response to the relevancy
25 objection?

1 MR. SAYRE: I don't -- I don't see how it could be
2 any more relevant. It is discussing the issue -- all
3 this goes to the issue of intent. If I intended to
4 manipulate the market, I would had to have made a
5 statement that could have moved the market. All this
6 information proves that these statements or the omission
7 of or even the IFR articles in their entirety did not
8 show any pattern that this information being omitted
9 would have in any way manipulated the market. It is
10 simply a statement that, namely, the pattern is not
11 consistent with a pump and dump scheme, a scalping
12 scheme, or a market manipulation scheme even by the
13 trading patterns themselves, which are presented in the
14 charts.

15 And then, of course, this whole case is
16 intent, and, of course, the entire case based on
17 character. But intent is a key issue here. And if we
18 can't prove anything related to intent, we have no
19 defense, and I think that is exactly what Mr. Robinson is
20 looking for.

21 THE COURT: That is your response with respect to
22 the relevancy of all three opinions, that they all relate
23 to intent?

24 MR. SAYRE: Yes, Your Honor. It is entirely based
25 on intent, proving these facts that the market

1 manipulation scheme that Mr. Robinson alleges simply did
2 not exist. So there couldn't have been intent to defraud
3 if there was no scheme to defraud.

4 MR. ROBINSON: I don't really see how Mr. Knudson
5 is in a position to voice that opinion, but I can only
6 guess because I don't know what the bases are for that,
7 Your Honor.

8 THE COURT: Well, perhaps to make the record
9 clear, Mr. Knudson is here, I should ask him for the
10 information that really should have been provided in the
11 letter, and I would ask the clerk to tell the jury that
12 they can take a break for 15 more minutes. Thank you.

13 Yes. Mr. Knudson, when you state that you do
14 not see any pattern of fraud showing market manipulation
15 by Silver Screen, what do you mean? What is your -- what
16 will you testify to?

17 THE WITNESS: I believe I was -- I was possibly
18 addressing this in my testimony when I made the
19 observation that there was no immediate purchase or sale
20 of e-Connect stock before or after a release of an IFR
21 opinion.

22 THE COURT: You have made that statement to the
23 jury, and you certainly can. The question is whether you
24 can state the opinion that this shows there was no fraud
25 or market manipulation. And that is a legal question for

1 the court, is this a proper subject for expert testimony.

2 THE WITNESS: Well, I believe --

3 THE COURT: Looking at the patterns like you have,
4 highlighting the significance of the patterns, as you
5 have, that the defendant, for example, sold at a loss at
6 one point when if he held onto March 9th rather than
7 selling on March 2nd, he would have made more money. You
8 have made that point to the jury.

9 The question is, whether as an expert -- and I
10 am not going to argue with an expert as to admissibility
11 of evidence. My argument is to Mr. Sayre.

12 THE WITNESS: If I may, Your Honor.

13 THE COURT: So the question is whether, Mr. Sayre,
14 your witness, your expert witness, can say, looking at
15 these patterns, there is no fraud. Is that a proper
16 subject of an expert's opinion, or is that something
17 better saved for closing argument?

18 Certainly, the evidence has been presented to
19 the jury through Mr. Knudsen's expert testimony. He
20 did -- for example, referring to 2291, Exhibit 2291 in
21 his testimony this morning, stated that -- or pointed
22 out, essentially, in his testimony that Silver Screen
23 continued to purchase stock at a higher price. The total
24 buy-back was significantly greater than the sale. This
25 is all evidence that has been presented to the jury

1 through your expert.

2 MR. SAYRE: Yes, Your Honor.

3 THE COURT: And I guess it could be referred to as
4 pattern evidence. And in your closing argument you can
5 certainly argue that this -- that there is no pattern of
6 fraud or there is no showing of market manipulation here.
7 You can assert, I would suggest tentatively, that this
8 tends to disprove the government's allegation that you
9 had a scheme or used a scheme to defraud or engaged in a
10 transaction practice or course of business which operated
11 as a fraud. You can argue this.

12 The question is, can you have your expert
13 opine that the pattern does not reveal market
14 manipulation or is not a pattern of fraud.

15 That would seem to be a legal conclusion or an
16 argument that should be made to the jury and not be
17 highlighted by an expert.

18 MR. SAYRE: Your Honor, may I answer that?

19 THE COURT: Yes.

20 MR. SAYRE: Okay. In regard to that, he will be
21 testifying to an ultimate issue in this case as an
22 expert, but if I testify to it, I am not an expert.

23 THE COURT: I am talking about closing arguments
24 based upon the evidence presented.

25 MR. SAYRE: That is what I mean, Your Honor. Our

1 experts are being refused the right to make an expert
2 opinion, which I believe is allowed by 704A. If he
3 doesn't make an opinion, the entire purpose of an expert
4 has been excluded from the trial. Because he is just
5 stating facts. He is a summary witness, not an expert.
6 He is no longer being allowed to present himself to the
7 jury as an expert witness.

8 THE COURT: I would pose the same question with
9 respect to the pattern of withdrawals. Presumably,
10 Mr. Knudson is going to have a chart examining the
11 pattern of withdrawals or bank transactions by Silver
12 Screen. That evidence can be presented to the jury.

13 But for the conclusion that this isn't -- that
14 this pattern is not fraudulent, that would seem to be
15 something for the jury to decide.

16 MR. SAYRE: Well, but they are not experts, Your
17 Honor, and neither am I. So he is determining this
18 information from decades of experience as a forensic
19 accountant, an IRS investigator, and all his other
20 qualifications.

21 THE COURT: In that regard, the summary of his
22 testimony doesn't tell us anything about the pattern he
23 is going to identify or what the basis -- what his
24 opinion is in this regard other than there is no pattern
25 of withdrawals that would be an indication of fraud.

1 That is the idea indicated in Exhibit 1.

2 MR. SAYRE: Well --

3 THE COURT: But what is the witness going to say?
4 What is his reasoning? Mr. Knudson.

5 THE WITNESS: Well, basically, I would point out
6 that on the -- my exhibit, it doesn't have any
7 significant withdrawals or payments to Mr. Sayre. So
8 when we have a million or so dollars going through the
9 account, the jury can obviously see for themselves that
10 there aren't a significant amount of monies that are
11 going out to Mr. Sayre.

12 And it goes to the lifestyle evidence that the
13 government has put on with respect to the Ferrari and the
14 lavish lifestyle that he was living up in Hollywood
15 Hills. It goes to the fact that he was not really
16 profiting from his scheme, his market manipulation
17 scheme.

18 And so I think it does fairly present the
19 evidence in this case to the jury with respect to him and
20 the profitability of his scheme and how he used those
21 profits.

22 THE COURT: Mr. Robinson, what is your response to
23 this offer?

24 MR. ROBINSON: Well, at least now I have some idea
25 of what Mr. Knudson wants to testify about. That is

1 helpful.

2 But I would also say, Your Honor, and I
3 believe that we laid out the law in our motion in limine,
4 it is improper to have an expert witness opine about the
5 law; and even though 704A allows expert testimony to be
6 admitted that may embrace an ultimate issue, it is
7 improper to have an expert rendering legal opinions or
8 directing the jury to draw legal conclusions about the
9 evidence based on that opinion.

10 And the way Mr. Sayre, at least, is framing
11 how he expects this opinion to come out, it is that
12 Mr. Sayre didn't commit fraud, as would be the conclusion
13 of the witness based on his review of the pattern
14 evidence that he has described. I think that is
15 improper.

16 If Mr. Sayre wants to have him highlight and
17 explain the transactions that the witness has just
18 described here, I don't have a problem or an objection to
19 that now that I know what they are. I agree that, in
20 closing argument, Mr. Sayre can -- with the benefit of
21 the instructions that the court will be giving the jury,
22 not Mr. Knudson or me or Dr. Cornew, he can argue the
23 proper inferences to be drawn.

24 But I don't think that Mr. Knudson should be
25 framing opinions in terms of whether or not fraud exists

1 here for Mr. Sayre based on this type of information.

2 THE COURT: I agree. The evidence of what the
3 transfers or withdrawals were from the Silver Screen
4 accounts can be introduced and highlighted by the expert,
5 but the expert can't testify as to the ultimate
6 conclusion of whether this is an indication of fraud or
7 not.

8 That can be argued by Mr. Sayre to the jury in
9 his closing arguments, and the government can make an
10 argument and the defendant but -- as to how the jury
11 should decide the legal issues, but experts -- expert
12 opinion on this would not be appropriate, in my view.

13 Mr. Sayre, anything further by way of
14 response?

15 MR. SAYRE: Yes, Your Honor. In that respect, I
16 understand the concept of fraud being a legal issue.
17 Could Mr. Knudson simply refer to these issues as being
18 generally accepted practice or in regard to being
19 permissible as to the rules that he understands them as
20 an accountant and as a forensic accountant as an
21 investigator, rather than making a legal determination.
22 And I understand the point that fraud would be a legal
23 determination. So if he uses the appropriate terminology
24 that would be relevant to his expertise, that may be
25 appropriate.

1 THE COURT: All right. What about the third
2 opinion that, after reviewing all the evidence,
3 Mr. Knudson reached the opinion that Silver Screen was
4 following the market in their trading? The third opinion
5 seems to have some relation to the first opinion, but
6 what is the basis? What is the reasoning behind this
7 conclusion, Mr. Knudson?

8 MR. ROBINSON: The conclusion or the basis for the
9 conclusion would be just looking at the evidence that is
10 contained in Exhibits 290, 291 and that the patterns of
11 his trading, the purchasing and selling, are very similar
12 to what Garrett Sayre was talking about was that Mr. --
13 Mr. Sayre is a student of the market, and he looks for
14 trends.

15 And when you look at the trends that exist in
16 the trading of Silver Screen, by Silver Screen of
17 e-Connect, you can quite clearly see that many of these
18 trades occur between 10:00 and 11:00 or in a certain
19 period of time. He is not an early morning trader. He
20 is a mid morning trader. And I think that is very
21 relevant in explaining that his trading activity does not
22 follow, as Mr. Loveman indicated in his testimony,
23 immediately after or before the release of an IFR
24 opinion.

25 So I do think that it should be explained to

1 the jury that this pattern of trading that was used by
2 Mr. Sayre is not consistent with the releases of the IFR
3 opinions.

4 I think it is very clear from the exhibits
5 that we have placed into evidence, and maybe the argument
6 could be, again, it is argument, that Mr. Sayre could
7 point this out in his closing and just refer to the
8 exhibits and show them the obvious times of trading by
9 Mr. Sayre.

10 THE COURT: All right. Government have anything
11 to add?

12 MR. ROBINSON: Well, Your Honor, first of all, I
13 hope I didn't misunderstand Mr. Knudson on this. I take
14 it he is not going to be testifying about the defendant's
15 state of mind, that he infers that Mr. Sayre is -- as his
16 brother described him, has a certain frame of mind,
17 because that would not be proper expert testimony here.

18 MR. SAYRE: No, I will not.

19 MR. ROBINSON: If he wants to say that Mr. Sayre's
20 trading is consistent with the way people sometimes
21 described as day traders trade, which I think is kind of
22 what Mr. Knudson is saying, and I don't think day trader
23 has the kind of legal conclusion or issues that we are --
24 that I am concerned about in this case. So if he wants
25 to say that his pattern is consistent with somebody who

1 is just day trading in the market and leaves it at that
2 and then Mr. Sayre wants to argue that that somehow
3 negates his intent or refutes the government's evidence
4 on his intent, that is fine with the government.

5 THE COURT: I would agree. Mr. Sayre.

6 MR. SAYRE: Yes, Your Honor. What I would like to
7 do is I have two questions here that I think maybe would
8 clarify a few issues in regard to that.

9 That one question that was just discussed by
10 Mr. Robinson I was thinking might be best phrased as, is
11 the trading activity consistent with what would be
12 expected of a day trader in the market. And then another
13 question would be --

14 THE COURT: That would be fine.

15 MR. SAYRE: And then the other, do the trades and
16 publications appear to indicate that Silver Screen
17 Industries' trades were following the timing of IFR
18 releases or following the general market.

19 THE COURT: I don't believe there would be a basis
20 for that opinion in light of the government's objections
21 so far. Mr. Robinson?

22 MR. ROBINSON: Yes. I think that's crossing the
23 line towards talking about his intent, Your Honor.

24 THE COURT: All right. I am just going to take
25 about a five-minute break to consider your positions. I

1 stood up and reached for -- when Mr. Knudson referred to
2 Mr. Loveman's testimony, I reached for my notes of
3 Mr. Loveman's testimony on July 8 to confirm that he
4 didn't cross the line into opinions or open any doors.
5 And from glancing at my notes of his testimony, I find
6 that he did not, that he stayed away from improper
7 opinions. All right, I'll -- yes.

8 MR. SAYRE: One suggestion from Mr. Knudson, I
9 will just read it quickly, he said, "Based on your
10 analysis, do the trades and publications appear to
11 indicate that Silver Screen Industries' trades were
12 following the general market" and leave out the other
13 issue related to this. So this would be his expert
14 opinion related to the patterns and such.

15 MR. ROBINSON: I don't know what following the
16 market means, Your Honor.

17 MR. SAYRE: Well, the general market, the total
18 mix of information on the market. That would be what --

19 MR. ROBINSON: I believe that is confusing to the
20 jury.

21 THE COURT: I would sustain the objection to that
22 question.

23 THE WITNESS: Your Honor, perhaps --

24 THE COURT: I have heard argument from counsel,
25 proffer on both sides. Thank you.

1 THE CLERK: This court is in recess.

2 (Brief recess.)

3 THE COURT: In the trial, both sides are present.

4 We are outside the jury's presence. Considering the
5 issues raised in the government's motion in limine and
6 the parties' arguments today, the court will grant the
7 government's motion on grounds that the opinions are not
8 relevant and admissible.

9 The ultimate opinion that the -- that no
10 patterns of fraud or market manipulation are seen and
11 that the pattern of withdrawal is not an indication of
12 fraud, these opinions are not relevant or admissible,
13 referring to 702 and 704 of the evidence code, and I
14 would refer to the brief filed by the government on this
15 issue.

16 Essentially, if I allowed those opinions, the
17 role of the jury would be usurped improperly. Although,
18 in certain circumstances experts can testify to the
19 ultimate issues to be decided by the trier of fact, in
20 this case testimony on those ultimate issues is not
21 relevant or admissible. The jury can decide whether the
22 patterns set forth, for example, in 2291 and the
23 witness's testimony are indicative of fraud or not.

24 Similarly, the jury can decide whether the
25 patterns of withdrawals, which the expert is free to

1 testify about, those facts, the jury can decide whether
2 the facts highlighted -- introduced and highlighted by
3 the expert are indicative of fraud.

4 The -- however, as discussed before the break,
5 the witness, of course, can state facts regarding the
6 defendant's trading, and, for example, he can state that
7 in his opinion, the defendant's trading is consistent
8 with the trading of a day trader, but he can't give the
9 ultimate conclusion as to whether or not the trading is
10 indicative of fraud or not indicative of fraud. Neither
11 expert can do that, neither the plaintiff's expert nor
12 the defendant's experts.

13 The Rule 16 objection was also made. It is
14 true that the summary is inadequate and does not comply
15 with Rule 16, but I don't believe the remedy of exclusion
16 would be appropriate. So my decision is not based upon
17 the Rule 16 objection.

18 And we will bring in the jury, and Mr. Knudson
19 can take the witness stand again.

20
21 (The following proceedings were held in open court
22 in the presence of the jury.)

23
24 THE COURT: Good afternoon. In the trial I note
25 the presence of both sides and all of the jurors. Thank

1 you very much. Please be seated.

2 The witness is present, and he is reminded
3 that he was previously sworn and is still under oath.

4 Would you state your name again for the
5 record?

6 THE WITNESS: Carl Knudson.

7 THE COURT: Thank you Mr. Knudson.

8 Mr. Sayre, please continue.

9 MR. SAYRE: Yes, and I apologize for all the
10 delays in exhibit issues.

11 THE COURT: Your apology isn't necessary. I
12 would -- as I have explained to the jury, sometimes it
13 takes the court longer to address and resolve issues
14 outside the jury's presence than anticipated. I can
15 assure you that we are all working hard while you have a
16 recess, and we appreciate your patience. Usually our
17 breaks and discussions outside your presence serve to
18 expedite the proceedings.

19 Thank you. Mr. Sayre, please continue.

20 Q BY MR. SAYRE: Yes. Mr. Knudson, based upon your
21 analysis of the discovery as listed in Defense Exhibits
22 2290 and 2291, did you see whether the trading of
23 e-Connect stock occurred immediately after or before the
24 release of the IFR opinions at issue in this case?

25 MR. ROBINSON: Objection. Asked and answered.

1 THE COURT: Sustained.

2 Q BY MR. SAYRE: Is Silver Screen Industries' trading
3 activity consistent with what would be expected of a day
4 trader in the market?

5 A Yes.

6 Q Could you explain why?

7 A Day traders follow the market publications, chat
8 sites, and have a consistent pattern of when they trade
9 and don't trade. And generally, based on the pattern of
10 trading here, I see that this is rather consistent
11 trading -- you know, a constant trading pattern.

12 If I might expand a little bit further on
13 that.

14 Q Yes, I think if we could just have a description of
15 exactly how the trades indicate day trading, is the
16 timing of the trades and this sort of thing.

17 A I believe we previously discussed that the trading
18 pattern was consistent with a market that was going up.
19 You buy when the market is going up, hopefully, or just
20 before the market goes up. And traders are looking at
21 how the market reacts, and they will sell when the market
22 starts going down.

23 So when we see the trades that occurred by
24 Silver Screen, you can see that they were selling when
25 the market was going down and they were buying,

1 hopefully, in a market that was going up.

2 Q And in the trades, however, there were clearly
3 times when the trades were made at approximately the same
4 times of the day; is that correct?

5 A Yes.

6 Q Did you analyze the Prima Capital press releases in
7 this case?

8 A Yes, I did.

9 Q What are they?

10 MR. ROBINSON: Objection. Compound. Lack of
11 foundation.

12 THE COURT: Sustained.

13 Q BY MR. SAYRE: Who was the source of these releases,
14 which company?

15 A The source of all the releases?

16 Q No. Prima Capital.

17 MR. ROBINSON: Objection. Compound. Lack of
18 foundation.

19 THE COURT: Sustained. Are you referring to a
20 specific exhibit or Bates stamp within an exhibit?

21 MR. SAYRE: I am referring to the 2001 exhibit
22 which exhibits all the total mix of information on the
23 market and Prima Capital releases, just the individual
24 Prima Capital releases, in that exhibit.

25 THE COURT: Which -- in light of the objection,

1 which Prima Capital release? You can refer to each of
2 them, but you have to refer to them specifically.

3 MR. SAYRE: Oh, I see.

4 Q BY MR. SAYRE: If you could review those releases on
5 your chart, we are looking for them here as well. If
6 you see them, you could indicate the various different
7 releases, I suppose, and that might facilitate things.
8 Yes, the ones on the chart are what we are referring to.
9 Those Prima Capital releases, who was responsible for
10 having those releases disseminated?

11 MR. ROBINSON: Objection. Lack of foundation.

12 THE COURT: Sustained.

13 Q BY MR. SAYRE: Did you determine who released the
14 Prima Capital releases on your chart?

15 MR. ROBINSON: Objection. Lack of foundation.

16 THE COURT: Sustained.

17 Q BY MR. SAYRE: Did you do an investigation to
18 determine who released the Prima Capital press releases
19 on your chart?

20 A Well, I merely looked at the releasing party on the
21 release which indicates the person who is releasing the
22 information.

23 Q Correct. Who was that?

24 A I am going to --

25 MR. ROBINSON: Objection, Your Honor. The

1 document speaks for itself, if his conclusion is based
2 merely on reading the document.

3 THE COURT: Sustained.

4 Q BY MR. SAYRE: All right. Well, let's turn to
5 Exhibit 2291A. Could you explain this exhibit to the
6 jury?

7 THE COURT: 2291A will be marked for
8 identification.

9 MR. SAYRE: Thank you.

10 THE WITNESS: 2291A is an Excel spreadsheet of all
11 the banking activity in the Silver Screen bank account at
12 Bank of America covering the period October 1999 to
13 March 5th, 2000. This exhibit was prepared from the bank
14 statements, deposit items, withdrawal items provided by
15 the government, and they are referenced on the chart to a
16 particular Bates number where you would find that
17 information.

18 Q BY MR. SAYRE: And then preparing these exhibits,
19 what information did you draw?

20 A In constructing a bank analysis, you always start
21 with the bank statements. That provides a foundation of
22 all the information that is going to be on your
23 spreadsheet. That ensures that every nickel that went
24 through the bank account is accounted for. So you would
25 look at the bank statement first.

1 Then you would look at the supporting
2 documents such as the deposit tickets, deposit items,
3 incoming wire transfers.

4 Then, from the other side of the ledger, you
5 would look at withdrawals, which would be evidenced
6 perhaps by outgoing wire transfer orders or cancelled
7 checks.

8 And you put all of that information in its
9 appropriate designation on each row which would allow the
10 jury to look at the document and determine the source of
11 the funds that came into the account and the disposition
12 of the funds going out.

13 Q And is this an accurate reconstruction of all the
14 banking activity within the Silver Screen account?

15 A Yes, it is.

16 MR. SAYRE: Your Honor, may I have permission to
17 publish Exhibit 2291A?

18 THE COURT: Any objection?

19 MR. ROBINSON: Could I voir dire the witness on
20 just one issue, Your Honor?

21 THE COURT: Yes.

22
23 VOIR-DIRE EXAMINATION

24 BY MR. ROBINSON:

25 Q Mr. Knudson, on the far right-hand side of this

1 Exhibit 2291A for identification, there is a column that
2 says comments?

3 A Yes.

4 Q Could you explain what was the basis for your
5 preparing the comments section?

6 A This is the information that came off the check.

7 Q Verbatim off the check?

8 A Pretty much, yes.

9 MR. ROBINSON: Thank you, Your Honor.

10 THE COURT: Thank you. 2291A is admitted and may
11 be published to the jury.

12 MR. SAYRE: Thank you.

13

14 DIRECT EXAMINATION (Res'd)

15 BY MR. SAYRE:

16 Q Mr. Knudson, can you summarize your findings with
17 respect to Exhibit 2291A?

18 MR. ROBINSON: Objection. Vague and ambiguous as
19 to the scope of findings.

20 THE COURT: Sustained.

21 Q BY MR. SAYRE: Could you explain to the jury what
22 Exhibit 2291A represents in --

23 A Yes. 2291 represents all the funds that went into
24 Silver Screen Industries, and the -- as you can see on
25 line 1, the beginning balance in this account was

1 \$15,488.

2 You can then see monies that are coming in to
3 the account in the deposit column, and you can see that
4 there was a 95,000 amount that came in. And this,
5 although not perfect evidence, would indicate that this
6 \$95,000 came from DAI. And I think you heard testimony
7 about DAI and its relationship.

8 The other monies that came in -- substantially
9 came in from E-trade Securities, if you go down to
10 February 18th, you will see a deposit for \$131,000. This
11 is a wire transfer credit from E-trade Securities, and
12 you can see that this money came in. And there were then
13 subsequent monies that went out right after that to
14 E-trade Securities and a person by the name of Jane
15 Sayre.

16 There was a deposit after that of \$4680, and
17 that came from something called Cinema Arts
18 Entertainment.

19 And it appears that right after that, there
20 were wire transfer orders from E-trade Securities, and
21 after that, Dean Witter Reynolds.

22 From the deposit side, the total amount that
23 went into the account was \$1,693,000 and change, and this
24 same amount of money went out -- or a little bit more
25 when you include the amount that was already in there.

1 From the withdrawal side, I think the
2 comments section were designed to put in the payee of the
3 check or information that was on the check or on the wire
4 transfer order, which would tell you who the person was
5 receiving the money.

6 Q Based on your charts, what is your summary of the
7 information regarding Silver Screen Industries' trades?

8 MR. ROBINSON: Objection. Your Honor. Vague and
9 ambiguous.

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Having reviewed all the information,
12 what do the trading patterns of Silver Screen indicate?

13 MR. ROBINSON: Your Honor, objection. This chart
14 deals with a bank account, not with a trading account, so
15 the question is unclear as to what he is referring to.

16 THE COURT: Sustained.

17 MR. SAYRE: I would be referring back to chart
18 2290 and chart 2291.

19 THE COURT: Can you state the question?

20 MR. SAYRE: Yes.

21 Q BY MR. SAYRE: Based on these two charts, 2290 and
22 2291, what does the trading activity of Silver Screen
23 Industries indicate?

24 A Well, it indicates that the pattern of trades was
25 similar to a day trader, that the trading was consistent

1 with the market in -- that was going up or a market was
2 going up, very consistent with what traders do is that
3 they try to get in when the market is going up, and they
4 try to get rid of their stock than the market is going
5 down.

6 MR. SAYRE: All right. Then no further questions,
7 Your Honor.

8 THE COURT: Thank you. Mr. Robinson, any
9 cross-examination?

10 MR. ROBINSON: Yes, Your Honor.

11
12 CROSS-EXAMINATION

13 BY MR. ROBINSON:

14 Q Mr. Knudson, in your work as an IRS agent, did you
15 actually investigate securities fraud?

16 A No. We didn't actually investigate securities
17 fraud. We investigated in parallel -- normally with the
18 FBI on security fraud matters.

19 Q You investigated tax offenses, money laundering
20 offenses with the IRS; correct?

21 A Yes. Including that, yes.

22 Q And when you were working in private practice with
23 KPMG and Price Waterhouse, you talked about being
24 involved in SEC compliance matters?

25 A Yes.

1 Q Did you investigate securities fraud?

2 A Yes.

3 Q All right. Now, with respect to the charts that
4 Stephen Loveman, the government's witness, forensic
5 auditor, provided, he provided some charts. I assume you
6 have reviewed those previously?

7 A Briefly, yes.

8 Q With respect to the chart that he had listing the
9 purchases and sales of e-Connect stock in the Silver
10 Screen account, did you have any -- did you find any
11 mistakes in that chart with regard to how much stock was
12 bought or sold and when it was bought or sold?

13 A No. Quite frankly, I didn't focus on Mr. Loveman's
14 work product. I didn't really have much of an opinion on
15 it.

16 Q Okay. So you don't dispute the accuracy of his
17 chart showing the buys and sells in the Silver Screen
18 account with respect to E-trade; correct?

19 A Well, it is just my impression. I didn't review
20 them in extensive detail. But I believe they are
21 reasonable.

22 Q And with respect to the determinations reflected on
23 those charts about the profit that was made from, for
24 example, the purchase and sale of the first 96,100
25 shares, you come up with the same profit figure that

1 Mr. Loveman had; correct?

2 A Yes.

3 Q And then with respect to the subsequent purchase
4 and sale of e-Connect shares in the Silver Screen
5 account, the 80,000 plus a bit, you come up with the same
6 profit that Mr. Loveman came up with, didn't you?

7 A Yes, I did.

8 Q Now, with respect to the charts that you prepared,
9 you prepared -- just a moment and I will have it. You
10 prepared the chart that indicated when -- this is Defense
11 Exhibit 2291. Do you have that before you?

12 A Yes.

13 Q Now, this is the chart that you prepared that
14 listed what you described as releases?

15 A Yes.

16 Q And chronologically, along with purchases and sales
17 of e-Connect stock in the Silver Screen account; correct?

18 A Yes.

19 Q Now, when you were referring to the documents that
20 you described as releases --

21 A Yes.

22 Q -- you correlated those with items that you were
23 able to locate either because they had been produced by
24 the government for the defendant --

25 A Yes.

1 Q -- as instances of items which were publicly
2 disseminated over the Internet concerning e-Connect;
3 correct?

4 A Yes.

5 Q And some additional items that you located through
6 your investigation; correct?

7 A Yes.

8 Q Now, with respect to these items, when you listed
9 them on your chart, you listed them by what you referred
10 to in the second column as a release title?

11 A Yes.

12 Q So you have Exhibit 2291 before you?

13 A Yes, I do.

14 Q So that would be what the headline was on the
15 release; correct?

16 A Yes.

17 Q All right. And the headline on the release may or
18 may not describe what it discussed about e-Connect in the
19 release; correct?

20 A Yes.

21 Q So, for example, you had opinions from something
22 called the subway.com; right?

23 A Yes, I did.

24 Q And on your chart where you list opinions for the
25 subway.com, let's take an example, the one that appears

1 on the third page of your chart for the subway.com on
2 March 2nd, 2000.

3 A Yes.

4 Q And you describe as subway.com announces investment
5 opinion on stereoscope.com?

6 A Yes.

7 Q And then you correspond that to a document in the
8 Bates number D with a lot of zeros and then 62-64?

9 A Yes.

10 Q Okay. That opinion was not an investment opinion
11 about e-Connect, was it?

12 A I will have to refer to it.

13 Q Could you look at it. You have the underlying
14 document?

15 A Yes.

16 The reference is to e-Connect at the bottom of
17 the document, and I think there is four pages.

18 MR. ROBINSON: Your Honor, may I display this --
19 this is an underlying document supporting that exhibit.
20 It is marked as D000062.

21 MR. SAYRE: It speaks for itself, Your Honor.

22 THE COURT: And it is in Exhibit 2001?

23 MR. ROBINSON: Yes. It is the basis for 2001.

24 THE COURT: Overruled.

25 Q BY MR. ROBINSON: So, Mr. Knudson, I have placed on

1 the screen so the jury and the court can see, this is
2 the document that you referred to in your chart as the
3 subway opinion; correct?

4 A What Bates date?

5 Q March 2nd, 2002.

6 A What Bates number do you have there?

7 Q 0000062.

8 A Okay.

9 Q And on your chart, how do you describe this
10 document?

11 A Announces investment opinion on stereoscape.com
12 headline with e-Connect.

13 Q And on this document, it discusses, does it not,
14 numerous companies?

15 A Yes, it does.

16 Q Where does it discuss e-Connect?

17 A It discusses e-Connect at the bottom of the page.

18 Q And isn't it correct that the only thing it says
19 about e-Connect is under the heading, market's largest
20 dollar volume leaders, dot, dot, dot, it lists e-Connect
21 OTC BB, colon, e-Connect, which is the trading symbol for
22 e-Connect, and then a bunch of other companies?

23 A Yes.

24 Q So the only information this provides, it is not an
25 investment opinion about e-Connect, is it?

1 A I am not quite sure that it is an investment
2 opinion, but it does have information regarding
3 e-Connect.

4 Q The only information it has is that e-Connect,
5 along with another -- the other companies listed here --
6 and now I will display the second page of this exhibit,
7 which continues on -- e-Connect and all those other
8 companies listed, starting on the bottom of that first
9 page and continuing to the top of the second page, are
10 just described as the market's largest dollar value
11 leaders?

12 A Yes.

13 Q So for purposes of your total mix analysis, all
14 this type of release contributes is that it tells the
15 public there is a lot of trading going on in dollar
16 volume in e-Connect, along with a bunch of other stocks;
17 correct?

18 A Yes. At the bottom of 61, it talks about when
19 e-Connect was established and the technology and a short
20 little description of what they were doing.

21 Q This is 62, though.

22 A Understand, but I think this is related to that as
23 well. Maybe not. Never mind.

24 Q Is it fair to say that that is an example of a
25 release which is not an investment opinion about

1 e-Connect?

2 A Yes.

3 Q Rather, it -- is it fair to say it is simply a
4 description of trading activity in e-Connect?

5 A Yes. It is information out on the market about
6 e-Connect.

7 Q And it does not recommend that anybody buy
8 e-Connect, does it? No recommendation appears in that?

9 A No.

10 Q And there is no projection in it or prediction that
11 e-Connect will reach a certain dollar volume or a certain
12 price in the future, is there?

13 A No.

14 Q Now, Mr. Knudson, I would like you to continue on
15 with your chart. We will look at some other examples of
16 what you have cited as releases.

17 Could you please look at -- at the
18 equityalert.com announces investment opinion number 8 of
19 8, which I believe is on your chart as a release on
20 January 7th of 2000.

21 A Okay.

22 MR. SAYRE: Your Honor, could we have the exhibit
23 published so we know what Mr. Robinson is referring to?

24 MR. ROBINSON: Your Honor, I am referring to
25 Defense Exhibit 2291 for the reference to the listing

1 that Mr. Knudson has.

2 THE COURT: All right. It is Defense Exhibit
3 2291.

4 MR. ROBINSON: Right. And then I have referred
5 him to a particular entry which is on this exhibit, which
6 is the one that is described in the far left column as
7 releasing firm, equityalert.com, release --
8 equityalert.com announces investment opinion number 8 of
9 8.

10 THE COURT: And is this opinion included in
11 Exhibit 2001?

12 MR. ROBINSON: I believe it is, Your Honor, as
13 Bates number D0000003 through 4 as the underlying
14 document.

15 THE COURT: Thank you. Do you have a question?

16 MR. ROBINSON: Yes. I want to refer him to that.

17 Q BY MR. ROBINSON: Now, with respect to that document,
18 do you have that before you?

19 A Yes, I do.

20 Q Okay. Now, the title of that document is what?

21 A Equityalert.com announces investment opinion number
22 8 of 8.

23 Q Now, that is not the title that you used for the
24 release title, is it?

25 A No. It is the third line down.

1 Q Okay. So sometimes you used the title of the
2 article and sometimes you didn't when you described it in
3 this exhibit; is that correct?

4 A Yes.

5 Q All right. So, now, referring to this article,
6 what in this article did you find that was relevant to
7 e-Connect that's reflected on your chart?

8 MR. ROBINSON: Your Honor, may I publish this?

9 THE COURT: Yes.

10 Q BY MR. ROBINSON: What in this exhibit did you find
11 relevant about e-Connect that caused you to list it on
12 your chart?

13 A The statement E-connects gains 53.06 percent after
14 taking first quarter order.

15 Q So there is a reference to the increase in the
16 stock price of e-Connect?

17 A Yes.

18 Q Anything else?

19 A No.

20 Q So it is fair to say that this is not an investment
21 opinion recommending e-Connect, is it?

22 A That is true.

23 Q And it doesn't project any -- give any opinion
24 projecting any increase in E-connect's price, stock price
25 in the future, does it?

1 A Well, actually, if you read it, I think you could
2 conclude that this talking about a gain of 53 percent, I
3 think --

4 Q Does it say it is going to gain in the future to a
5 certain price per share level?

6 A I think you could conclude that, yes.

7 Q Where -- that is an inference you are drawing,
8 isn't it?

9 A That is true.

10 Q What does it say in this document about any
11 prediction of future stock price? Does it specify a
12 price, it is going to go up to a certain amount?

13 A No, it doesn't.

14 Q And so, it is fair to say that this reflects
15 historical information about where e-Connect stock is
16 trading at that point in time, and that is all it does?

17 A That is true.

18 Q Now, with respect to e-Connect itself, it put out
19 releases; correct?

20 A Yes.

21 Q The company itself issued releases. And you have
22 included those on your exhibit, Defense Exhibit 2291;
23 correct?

24 A Yes.

25 Q Is it fair to say that in the company's own press

1 releases, it did not predict a particular stock price in
2 the future?

3 A I think that would be fair to say that that is
4 probably accurate.

5 Q And it wouldn't be fair to characterize the
6 company -- E-connect's own press releases as investment
7 opinions, would it?

8 A I don't know. I don't know that you -- I think
9 that's an opinion that I couldn't advance.

10 Q Is it fair to say that the company's own releases
11 about itself are not presented as being independent from
12 the company?

13 A That is probably true.

14 Q Now, on your Exhibit 2291, there were also
15 releases, weren't there, from companies other than
16 e-Connect which made reference to e-Connect, and you
17 included those; right?

18 A Yes.

19 Q So, for example, if we could look at the release
20 you have listed on here for e-Connect -- well, just a
21 moment, I'm sorry.

22 MR. ROBINSON: May I have just one moment, Your
23 Honor? I need to clarify something about this exhibit.

24 I apologize for the delay.

25 Q Mr. Knudson, if you would look on the Defense

1 Exhibit 2291, you have an entry for releasing firm E
2 funds for January 28th, 2000?

3 A Yes.

4 Q See that. And then you have the underlying
5 document that supports that, which is D0000011?

6 A Yes.

7 Q And could you turn to that document, please. Do
8 you have that before you?

9 A I am looking. I don't have that in my exhibit
10 package, I don't believe. Let me look again.

11 Q You don't have that, sir?

12 A I don't have that here in my package, no.

13 MR. ROBINSON: Your Honor, I could approach him
14 and give him my copy?

15 THE COURT: Yes.

16 Q BY MR. ROBINSON: You now have before you Defense
17 Exhibit 0000011?

18 A Yes, I do.

19 Q And this is the release that you cite in support of
20 the entry on your chart, Exhibit 2291, with respect to
21 E funds on January 28th, 2000; correct?

22 A Yes.

23 Q Now, this, a news release, is from -- not from
24 e-Connect; correct?

25 A That's correct.

1 Q You attribute on your chart to E funds; correct?

2 A Yes.

3 Q And in this release, is -- let me strike that.

4 Is this release an investment opinion on
5 e-Connect? It is not, is it?

6 A No.

7 Q And this release doesn't predict any particular
8 future price for e-Connect, does it?

9 A No, it doesn't.

10 Q And it doesn't recommend that people buy e-Connect,
11 does it?

12 A Not specifically, no.

13 Q And it doesn't purport to be from any independent
14 investment analyst, does it?

15 A Well, it has a safe harbor statement at the bottom
16 of the page, so I am not sure how to answer that
17 question.

18 Q Well, is there anything in this document where the
19 company releasing it says they're independent investment
20 analysts with regard to e-Connect?

21 A It doesn't say that, no.

22 Q Isn't this a case of another company that does
23 business with e-Connect talking about their business
24 relationship?

25 A I don't know.

1 Q Now, I would like you to look on your -- excuse me,
2 I keep saying your. I apologize. This is Defense
3 Exhibit 2291 which you have prepared. Please turn to the
4 second page, and you have an entry there for something
5 released by freedomstocks.com?

6 A Yes.

7 Q And that is for February 7th, 2000?

8 A Yes.

9 Q And do you have the underlying documents supporting
10 that, 2550 and 2521?

11 MR. SAYRE: Your Honor, I would like to object
12 under Rule 403. We are not even in the relevant time
13 period. This is a waste of time.

14 MR. ROBINSON: This is a defense chart, Your
15 Honor.

16 THE COURT: Overruled.

17 Q BY MR. ROBINSON: Do you have that before you,
18 Mr. Knudson?

19 A Say those again, please.

20 Q I believe on your chart it is 2508 and 2509.

21 THE COURT: I believe you just referred to earlier
22 Bates stamp 2550 and 2521.

23 MR. ROBINSON: Your Honor, I apologize. I
24 misspoke about that. It is 2550 and 2521. I apologize.

25 THE COURT: Okay.

1 THE WITNESS: Okay.

2 Q BY MR. ROBINSON: And on your -- excuse me. I
3 apologize. On Defense Exhibit 2291, this entry that you
4 have for Freedom Stocks for February 7, 2000, how is
5 that described under release title?

6 A Freedomstock.com announces investment opinions for
7 week of February 7th, 2000.

8 MR. ROBINSON: May I publish it, Your Honor?

9 THE COURT: Yes.

10 MR. SAYRE: Your Honor, I would like to also
11 object that, for whatever reason, we couldn't read from
12 these documents. I object to the fact the prosecution is
13 doing the same.

14 THE COURT: Overruled. The argument lacks merit
15 or basis.

16 Q BY MR. ROBINSON: Mr. Knudson, so in this particular
17 instance on Defense Exhibit 2291, you used the same
18 title as appears at the top of this release, correct,
19 Freedomstocks.com announces investment opinion for week
20 of February 7th, 2000?

21 A Yes.

22 Q Where in this document did you find information
23 that related to e-Connect?

24 A Give me a moment, please. On 2550, there -- seems
25 to be related to another document, which is 2521. It is

1 listed on 2521.

2 Q Well, you have it listed for 2550, don't you, on
3 your chart?

4 A Yes, I do.

5 Q So let's, if it we can, for the moment stick with
6 2550, because that is the document that matches the title
7 that you have for this entry; correct?

8 A That is true. I was interrelating these two on the
9 same date.

10 Q Okay. Well, on this document, 2550, isn't it the
11 case that the only thing in this document that even --
12 that mentions e-Connect is where it says "Recently
13 profiled U.S. companies include," a number of companies
14 are listed, and at one point it says e-Connect?

15 A Right.

16 Q Is there anything else about e-Connect on this
17 document?

18 A No.

19 Q And so, it is fair to say that this is not an
20 investment opinion itself concerning e-Connect; correct?

21 A That is true.

22 Q It makes no prediction of future price for the
23 company; correct?

24 A That's correct.

25 Q And it doesn't recommend that people buy the stock,

1 does it?

2 A No, it doesn't.

3 Q On Defense Exhibit 2291, you also included, did you
4 not, news service articles that referred to e-Connect;
5 correct?

6 A Yes.

7 Q For example, you had a news service article
8 regarding e-Connect that appears from something called
9 Asia Pulse PTE, and that is on page 4 of 2291 for a
10 release date of March 8th, 2000; correct?

11 A Yes.

12 Q And the underlying document that you had that
13 supported that is marked as D00000074; correct?

14 A Yes.

15 Q And that is not -- let me rephrase.

16 That's Asia Pulse PTE sending out a release on
17 repeating IFR; correct?

18 MR. ROBINSON: Your Honor, may I check with the
19 agent about one thing?

20 THE COURT: Yes.

21 Q BY MR. ROBINSON: I'm sorry for the interruption.

22 This is D00000074; correct?

23 A Yes.

24 Q Okay. And you put this on your -- on Defense
25 Exhibit 2291 described as asia.net summary for Wednesday,

1 March 8, 2000; correct?

2 A Yes.

3 MR. ROBINSON: Your Honor, may I display this?

4 THE COURT: Yes.

5 MR. ROBINSON: I am displaying D0000074.

6 Q BY MR. ROBINSON: At the top of it, it says asia.net
7 summary for Wednesday, March 8, 2000, which is the title
8 you used for the release title on your chart?

9 A Yes.

10 Q What on this document relates to e-Connect that
11 caused you to include it in your exhibit?

12 A At the bottom of the page.

13 Q And that is the part where it talks about the part
14 of what e-Connect said today concerning integration of
15 its systems?

16 A Yes.

17 Q Now, it is fair to say that this is not an
18 investment opinion, is it?

19 A No, it is not.

20 Q It doesn't make any predicted about the future
21 price of e-Connect?

22 A That is true.

23 Q Doesn't recommend that anyone buy e-Connect, does
24 it?

25 A No, it doesn't.

1 Q And it doesn't purport to come from an independent
2 investment analyst who doesn't have any interest in the
3 stock, does it?

4 A I don't believe so.

5 Q You also have on Exhibit 2291 release that comes
6 from something called Linux Stock News. This appears on
7 March 7th, 2000. It is on the first page of 2291.

8 A Yes.

9 Q And that is supported by Exhibit D00000072 and 73?

10 A Yes.

11 Q Could you turn to those supporting documents? Do
12 you have them before you?

13 A Yes, I do.

14 MR. ROBINSON: Your Honor, may I publish?

15 THE COURT: Yes.

16 Q BY MR. ROBINSON: Now, the title that you have on
17 Exhibit 2291 for this is Linux Stock News announces
18 investment opinion; correct?

19 A Yes.

20 Q And that comes from the top of this page; right?
21 That is where you got it?

22 A Yes.

23 Q Now, where on this document is there material
24 concerning e-Connect that caused you to include it as
25 part of Exhibit 2291?

1 A I don't have the first page. Oh, yes, I do. Here
2 it is. The very, very bottom of the page.

3 Q The very, very bottom of the first page?

4 A Yes. And then beginning at the top of the second
5 page.

6 Q Is that the part that says, "This week we revisit
7 e-Connect," starting on the bottom of that page 72?

8 A Yes.

9 Q And then, it continues onto the next page; correct?

10 A Yes, it does.

11 Q And on the next page, it appears to be cut off.

12 Do you see any other information about
13 e-Connect that appears on this defense exhibit?

14 A Just the reference to the information at the bottom
15 of the page and the references to Palm IPO and that kind
16 of connection.

17 Q Now, on your chart, this is described as Linux
18 Stock News announces investment opinion, but it is
19 correct, is it not, that this is not an investment
20 opinion about e-Connect, is it?

21 A That is true.

22 Q It does not recommend that anyone buy e-Connect;
23 correct?

24 A That's correct.

25 Q Doesn't project any future pricing levels for

1 e-Connect; correct?

2 A That's correct.

3 Q And it doesn't say that Linux Stock News is
4 independent and objective and has no position in
5 e-Connect, does it?

6 A No, it doesn't.

7 Q On Exhibit 2291, you include what could be
8 described as releases from something called Wall Street
9 Directory. And I invite your attention to page 4 of
10 2291, an entry for the date, March 3rd, 2000, that you
11 have listed the releasing firm Wall Street Directory?

12 A Yes.

13 Q And then beneath that you put barchart.com reprint.

14 A Yes.

15 Q And the corresponding supporting document is Bates
16 3082?

17 A Yes.

18 Q First, Mr. Knudson, you describe this in the
19 releasing firm column of 2291 as barchart.com reprint.
20 What investigation did you conduct to determine that Wall
21 Street Directory was a barchart.com reprint?

22 A I didn't.

23 Q So what -- why did you put something on your chart
24 that you didn't investigate? Was there a reason that you
25 put barchart.com reprint?

1 A That is in parentheses, so it may have been that
2 that is what I was believing that it was and failed to
3 take it out after -- after I couldn't find whether it was
4 or not.

5 Q So you don't really know where the Wall Street
6 Directory comes from or what its affiliation is with
7 barchart, do you?

8 A This came out of the government's exhibits.

9 Q But you don't have any knowledge because you didn't
10 investigate it; correct?

11 A That is true.

12 Q Now --

13 MR. ROBINSON: Your Honor, may I publish this?

14 THE COURT: Yes.

15 Q BY MR. ROBINSON: So is it fair to say that you don't
16 know who or what is Wall Street Directory?

17 A That is fair to say.

18 Q Now, on this document what information concerning
19 e-Connect did you find relevant that caused you to put it
20 on 2291?

21 A It was providing market information on e-Connect.

22 Q So, for example, it appears to indicate for the
23 date March 3rd of 2000, there is open, high, low, last,
24 change in volume numbers relating to e-Connect?

25 A Yes.

1 Q And that is historical stock information?

2 A Yes.

3 Q And then there are some additional items on here
4 called the composite indicator trend spotter. Do you
5 know what the composite indicator trend spotter is?

6 A It is an analysis performed by this company.

7 Q Are you speculating, or do you know that for a
8 fact?

9 A Well, I am speculating.

10 Q And you don't know how this company performs a
11 composite indicator trend spotter analysis, do you?

12 A No. I can only say that this is very similar to
13 what Bar Charts was doing.

14 Q And on this document, the word "buy" appears
15 multiple times; correct?

16 A Yes.

17 Q Now, it doesn't indicate, does it, any prediction
18 about future stock price for e-Connect, does it?

19 A It doesn't say it specifically, no.

20 Q So from this, you can't tell, can you, whether you
21 should buy e-Connect, according to this, when it is at
22 \$5-and-a-half or \$6 or \$9 or \$10 or \$20? You can't tell
23 from this, can you?

24 A That is true.

25 Q The buy is not in relation to any particular price?

1 A Only as it relates to that date.

2 Q And this does not indicate a time of day, does it,
3 when it came out?

4 A I don't see it listed here.

5 Q And, in fact, since it shows the open, high, low,
6 last, it would have to come out after trading closed that
7 day, wouldn't it?

8 A Yes, I believe I have indicated that.

9 Q So this wouldn't be a buy recommendation that came
10 out on the 3rd of March for trading that day because
11 trading that day is done; correct?

12 A Well, I don't know that that is actually true.

13 Q It shows last \$4.63?

14 A That is true, but --

15 Q Does that indicate a closing price that day for the
16 stock?

17 A Close of market is what that price is, but that
18 doesn't mean that trading couldn't have occurred after
19 close of market.

20 Q Now, this document doesn't purport to be from an
21 independent investment analyst who doesn't own any stock
22 in e-Connect, does it? There is nothing on here that
23 says that?

24 A That is true.

25 Q And then, Mr. Knudson, you also talked about

1 several times barchart.com as among the releases that you
2 put in Exhibit 2291; correct?

3 A Yes.

4 Q And so now, if I invite your attention to the entry
5 that you listed on 2291, by a release from barchart.com
6 for March 6th, 2000.

7 A Okay.

8 Q And so for that entry, the underlying pages for
9 that, do you have those well as well?

10 A Yes, I do.

11 Q And that is 3083?

12 A Yes.

13 MR. ROBINSON: May I publish it, Your Honor?

14 THE COURT: Yes.

15 Q BY MR. ROBINSON: Mr. Knudson, this is one of several
16 barchart.com releases that you have included in Exhibit
17 2291; correct?

18 A Yes.

19 Q This one is for -- it is described as historical
20 opinion as of 3/6/2000?

21 A Yes.

22 Q Does that indicate that this was printed out
23 sometime after 3/6/2000, since it is an as of date and it
24 says historical?

25 A I suppose so.

1 Q Now, on this chart, there is a listing of
2 historical stock price information for e-Connect on
3 March 6, 2000; correct?

4 A Yes.

5 Q With the open, high, low, last change, volume, et
6 cetera; correct?

7 A Yes.

8 Q And then there is some information that refers to,
9 for example, the 20-50 day MACD oscillator, 20-day
10 Bollinger bands, et cetera. And across from that, there
11 is the word "buy" that appears a number of times;
12 correct?

13 A Yes.

14 Q Now, is it fair to say that on this exhibit, there
15 is no recommendation -- strike that.

16 There is no prediction of future price for
17 e-Connect stock, is there?

18 A Well, there actually are predictions and
19 recommendations.

20 Q What price level does it say e-Connect stock is
21 going to be in the future, and where does it say that on
22 the chart?

23 A Well, it talks about short-term indicators,
24 seven-day directional indicator, ten to eight moving
25 average, and it is talking about a buy recommendation

1 over time. It doesn't say what the price would be.

2 Q Right. So a person reading this is not provided
3 with information as to a particular price or price range?

4 A reasonable investor looking at this is not given
5 information --

6 MR. SAYRE: Calls for speculation and conclusion.

7 MR. ROBINSON: I will rephrase it, Your Honor.

8 THE COURT: All right.

9 Q BY MR. ROBINSON: A person reading this document who
10 is considering investing in e-Connect is not provided
11 information about any specific or particular stock price
12 range; correct?

13 A Well, it actually does. I mean, it is telling you
14 the high and the low, and it is telling you what the
15 current price is and --

16 Q Let me -- excuse me. Let me rephrase that. I am
17 talking about future stock price. It does list
18 historical stock price as of March 6, but it does not
19 provide information as to specific stock price in the
20 future, does it?

21 A It doesn't tell you a specific stock price. Nobody
22 could ever predict that.

23 MR. ROBINSON: Your Honor, move to strike after he
24 answered the question "it does not provide specific stock
25 price."

1 THE COURT: Granted. Stricken.

2 Q BY MR. ROBINSON: Nor does it tell you a specific
3 dollar range of stock price in the future, does it?

4 A No.

5 Q So it doesn't tell you, for example, whether you
6 should buy the stock in e-Connect if it was at \$9 or \$10
7 or \$15 or \$20, does it?

8 A It doesn't give you a specific price, that's
9 correct.

10 Q And it doesn't purport to be provided by someone
11 who is independent and has no position or ownership of
12 e-Connect stock, does it? There is no disclaimer here in
13 that regard, is there?

14 A Not on this, no.

15 Q Now, I would like to you look at the IFR opinion,
16 independent financial reports's opinion, that is
17 referenced on Defendant's 2291 that appeared on March 8th
18 of 2000.

19 A Okay.

20 MR. ROBINSON: Your Honor, may I publish the first
21 page of this?

22 THE COURT: Yes.

23 Q BY MR. ROBINSON: Now, the copy I have, Mr. Knudson,
24 is from a copy that has been used previously in
25 evidence. But if you could look at the screen and

1 satisfy yourself that what I am displaying is the same
2 thing that you have for the March 8th Independent
3 Financial Report's opinion. Is that the one you are
4 familiar with?

5 A Hold on just a second. I have referred to it as a
6 different number. I recognize this one, but I also have
7 one that is referenced on my chart.

8 Q They appear to be the same document?

9 A Well, no. They are not the same document.

10 Q The same text?

11 A It is from Business Wire, so I would assume that it
12 is.

13 Q Would you be confused if I use this copy that I
14 have displaced? Because if you would in any way, I will
15 make sure I am using the same one you are using if you
16 think they are materially different.

17 A Go ahead.

18 Q Now, this is the March 8th Independent Financial
19 Report's opinion that -- that you have been referring to
20 in your testimony; correct?

21 A Yes.

22 Q And isn't it the case that, unlike all the other
23 releases that we have been talking about that I have
24 reviewed with you, this purports to be an independent
25 investment opinion?

1 MR. SAYRE: Your Honor, the document speaks for
2 itself, and it is argumentative.

3 THE COURT: Overruled.

4 THE WITNESS: Well, I don't think we reviewed all
5 of the information on my chart.

6 Q BY MR. ROBINSON: Of the ones I reviewed with you --

7 A But the ones you have, I would agree.

8 Q Right. And unlike the ones I have reviewed with
9 you that are on your chart, this does give predictions
10 and projections about specific prices that e-Connect
11 stock will reach in the future; correct?

12 A Yes.

13 Q And that is unlike any of the other releases on
14 your chart that we have discussed so far; correct?

15 A That is true.

16 Q And this includes a disclaimer at the bottom where
17 it says, "IFR holds no stock in e-Connect and is not and
18 will not be compensated for its opinion in regard to
19 e-Connect." That type of -- that disclaimer language,
20 the substance of that, doesn't appear on any of the
21 releases that we have reviewed so far; correct?

22 A That is true.

23 Q So of the releases that we have looked at so far,
24 the release by Independent Financial Reports is not a
25 press release, is it?

1 A No, it is not.

2 Q It is an investment opinion; correct? That is what
3 it calls itself; correct?

4 A Yes.

5 Q And each of the Independent Financial Reports
6 investment opinions are investment opinions and not press
7 releases; correct?

8 A Yes.

9 Q And each of these purports to be independent and
10 objective and coming from a company that has no interest
11 in the stock it is recommending; correct?

12 A That's correct.

13 Q And particularly the last one that I showed you
14 recommends purchase of the stock and talks about specific
15 future higher prices and growth in the prices of the
16 stock; correct?

17 A Yes.

18 Q Which of the other releases that you put into
19 Exhibit 2291 do that?

20 A Do you want me to review all of them?

21 Q If you can review them and find some that have
22 those same features, I would like you to identify them.

23 A I think the purpose of this exhibit is to show
24 press releases in context with all the information that
25 was out in the public. My --

1 MR. ROBINSON: Your Honor. Objection. Move to
2 strike as nonresponsive.

3 THE COURT: Sustained. Granted. Stricken.

4 Q BY MR. ROBINSON: Can you identify any releases that
5 you have listed on Defendant's Exhibit 2291 that have
6 one or more of the features that I just described to you
7 and you acknowledge are present in the Independent
8 Financial Reports investment opinions?

9 A No, I can't.

10 MR. ROBINSON: May I have a moment, Your Honor?

11 THE COURT: Yes.

12 MR. ROBINSON: No further questions, Your Honor.

13 THE COURT: Thank you. Any redirect, Mr. Sayre?

14 MR. SAYRE: Yes, Your Honor.

15

16 REDIRECT EXAMINATION

17 BY MR. SAYRE:

18 Q Mr. Knudson, did you say Equity Alert or subway.com
19 were opinions about e-Connect?

20 A No, I did not.

21 Q Did you state that -- in your exhibit that
22 E-connect's press releases were opinions?

23 A No, I didn't.

24 Q And did you state that E funds was an investment
25 opinion on your charts?

1 A No.

2 MR. ROBINSON: Your Honor, object to the form of
3 the question. He is just asking the witness what his
4 prior testimony was.

5 THE COURT: Overruled.

6 Q BY MR. SAYRE: Are the overwhelming majority of
7 articles in Exhibit 2001 entirely about e-Connect?

8 MR. ROBINSON: Objection. Vague and ambiguous as
9 to "overwhelming."

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Would it be fair to say that
12 approximately 90 percent of the articles in Exhibit 2001
13 are entirely about the e-Connect company?

14 A Yes.

15 Q Is it fair to say that the IFR opinions didn't give
16 100 percent buy ratings?

17 A That is true.

18 Q Is it fair to say that Wall Street Directory did
19 give 100 percent buy ratings?

20 A Yes.

21 Q Is it fair to say at the bottom of the IFR articles
22 that there was a considerable warning given regarding the
23 risks involving the stock market?

24 MR. ROBINSON: Okay. Irrelevant.

25 THE COURT: Sustained. And those exhibits that

1 have been admitted speak for themselves.

2 Q BY MR. SAYRE: Is it fair to say that the Wall Street
3 Directory 100 percent buy rating had no warning of any
4 kind?

5 A That is true.

6 Q Would it be fair to say that all articles tend to
7 produce different forms of information?

8 MR. ROBINSON: Objection. Vague and ambiguous.
9 Lack of foundation. Relevance.

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Did you find any two articles that
12 were identical in the 60-something articles that you
13 presented in Exhibit 2001?

14 MR. ROBINSON: Objection to the meaning of
15 identical.

16 THE COURT: Sustained under 402, 403, 702.

17 Q BY MR. SAYRE: Did any of the other articles in
18 Exhibit 2001 give 100 percent buy ratings in e-Connect?

19 MR. ROBINSON: Objection, Your Honor. Unclear as
20 to whether he is referring to the exact words,
21 100 percent buy rating, or that they recommended a buy
22 without any reservations. The question is ambiguous.

23 THE COURT: Sustained.

24 Q BY MR. SAYRE: Precisely, did any of the articles in
25 the Exhibit 2001 use the term 100 percent buy ratings

1 other than barchart.com and the Wall Street Directory?

2 A That is quite a big question. I am not sure. I
3 don't have all of the information in my head at this
4 moment. But there were some that were very positive. I
5 can't say that they used 100 percent buy rating.

6 Q And IFR articles did not use that term, did they?

7 A I don't believe so.

8 Q Did IFR own any stock in e-Connect?

9 MR. ROBINSON: Objection. Lack of foundation.

10 THE COURT: Sustained.

11 Q BY MR. SAYRE: Did you purport to investigate the
12 Wall Street Directory opinions?

13 A No.

14 Q Did you create the Wall Street Directory opinions?

15 A No, I didn't.

16 Q How many opinions did -- in combination of
17 barchart.com and Wall Street Directory produce on
18 e-Connect between the dates February 29th and March 8th
19 in the year 2000? I should say that are included in your
20 Exhibit 2001.

21 A Between February 28th and --

22 THE COURT: The question was February 29th and
23 March 8th in the year 2000.

24 THE WITNESS: Would you say it again, please?

25 Q BY MR. SAYRE: Just how many opinions were there

1 between February 29th and March 8th that are included in
2 Exhibit 2001?

3 A Are we talking about IFR opinions?

4 Q No. Wall Street Directory and barchart.com.

5 A Well, again, I don't believe they were opinions. I
6 think they were news releases.

7 Q In respect to the historical opinions in Wall
8 Street Directory and barchart.com, could you tell me on
9 the barchart.com and the Wall Street Directory, the
10 historical opinion for e-Connect, how many are there in
11 the 2001 exhibit?

12 A (No response.)

13 Q All right. Possibly that is not so important.

14 MR. SAYRE: I would like to broadcast eight of the
15 opinions, Your Honor.

16 THE COURT: Which of the documents? Can you
17 identify them?

18 MR. SAYRE: Yes. This is January 29th.

19 THE COURT: And you are referring to writings
20 listed in Exhibit 2291?

21 MR. SAYRE: Yes. Well, they are documents that
22 are -- yes, that are mentioned.

23 THE COURT: All right. Which documents?

24 MR. SAYRE: They are in Exhibit 2001, but I don't
25 know the specific identification.

1 THE COURT: If you could give me the name and the
2 date and the Bates stamp identifying number.

3 MR. SAYRE: Yes. Well, the first one would be
4 2/29/2000.

5 THE COURT: 2/29/2000. And which releasing firm?

6 MR. SAYRE: That would be barchart.com.

7 THE COURT: Barchart.com. All right. And that is
8 Bates stamped 3079?

9 MR. SAYRE: Actually, unfortunately, it is missing
10 from the exhibits I have here, but I would assume that it
11 is preceding --

12 THE COURT: I am referring to Defense Exhibit
13 2291. That is what I am reading from.

14 THE WITNESS: I have it in front of me.

15 MR. SAYRE: I think possibly we will just simplify
16 this.

17 Q BY MR. SAYRE: Could you just briefly describe to the
18 jury the concept of beneficial ownership for -- a
19 nominee beneficial ownership in offshore corporations?

20 MR. ROBINSON: Objection. Calls for a legal
21 conclusion and relevance and lack of foundation.

22 THE COURT: Sustained. Also beyond the scope of
23 cross.

24 MR. SAYRE: No further questions. Thank you.

25 THE COURT: Any further questions redirect -- or

1 recross, Mr. Robinson?

2 MR. ROBINSON: Just briefly, Your Honor. ^rce.

3
4 RECROSS-EXAMINATION

5 BY MR. ROBINSON:

6 Q Mr. Knudson, when you were asked about 100 percent
7 buy ratings --

8 A Yes.

9 Q -- your response was simply that the words
10 100 percent buy rating don't appear in the IFR opinions
11 anywhere; correct?

12 A I didn't -- I don't recall seeing those.

13 Q Okay. But there is no question that the IFR,
14 Independent Financial Reports, investment opinions
15 recommended that people invest in that stock of
16 e-Connect?

17 A That is true.

18 Q And with respect to 100 percent buy rating, of all
19 the other articles that are in Exhibit 2291, it is only
20 the ones that were put out under the name barchart and
21 Wall Street that used the words 100 percent buy rating;
22 correct?

23 A I believe that's correct.

24 Q And if you set aside those handful from barchart
25 and Wall Street along with the Independent Financial

1 Reports investment opinions, there is no other releases
2 in that exhibit where there is an investment opinion
3 recommending buying e-Connect?

4 A I don't think I could say that with any clarity.

5 Q It is the exhibit you prepared.

6 A That is true, but as I sit here right now, I can't
7 go through each one.

8 Q You don't remember any of them, do you?

9 A Not right now, I don't.

10 MR. ROBINSON: Nothing further.

11 THE COURT: Mr. Sayre --

12 MR. SAYRE: Yes, Your Honor.

13 THE COURT: -- any redirect?

14 Q BY MR. SAYRE: Mr. Knudson, in your experience as an
15 IRS agent and investigator for the U.S. Treasury, is it
16 impermissible to publish opinions?

17 MR. ROBINSON: Objection. Beyond the scope of the
18 direct, the redirect and the cross, lack of foundation,
19 and relevance.

20 THE COURT: Sustained on those grounds.

21 MR. SAYRE: No further questions, Your Honor.

22 MR. ROBINSON: Nothing further, Your Honor.

23 THE COURT: Can Mr. Knudson be excused as a
24 witness, Mr. Sayre?

25 MR. SAYRE: Yes, Your Honor.

1 MR. ROBINSON: Yes.

2 THE COURT: All right. Thank you very much. You
3 are excused.

4 And, Mr. Sayre, you may call your next
5 witness.

6 MR. SAYRE: Your Honor, would it be permissible to
7 take a short break?

8 THE COURT: We can get started, and then we will
9 take a break. Thank you.

10 The witness can approach the witness stand to
11 my right.

12 THE WITNESS: Thank you, Your Honor.

13 THE CLERK: Sir, can you please raise your right
14 hand?

15 THE WITNESS: Certainly.

16 (The wit was sworn.)

17 THE CLERK: Thank you. Please take a seat, and
18 can you please state and spell your full name for the
19 record.

20 THE WITNESS: Yes. My name is Ronald W. Cornew,
21 and that is spelled C-O-R-N-E-W.

22 THE CLERK: Thank you.

23 THE COURT: Mr. Sayre.

24

25 DIRECT EXAMINATION

1 BY MR. SAYRE:

2 Q Yes. Mr. Cornew -- I'm sorry. Dr. Cornew. How
3 are you employed?

4 A I am the president of Market Consulting Corporation
5 and have been so for approximately 20 years.

6 Q Can you describe your educational background?

7 A Yes, I have both a undergraduate and a graduate
8 degree from the Massachusetts Institute of Technology.

9 Q Can you describe your employment over the past 20
10 years?

11 A Yes. Over the last 20 years, I have been employed
12 as a consultant in the securities industry. We have --
13 over that time period, we have consulted for a large
14 number of different organizations, including the New York
15 Stock Exchange, Teachers Insurance and Annuity
16 Association, which is the insurance company and the
17 pension plan insurer and, for that matter, investment
18 manager of the pension plans of approximately 2000
19 colleges and universities in the United States. I have
20 also been involved with, as I mentioned, any number of
21 other organizations.

22 I also have been a professor at Ford
23 International University where I have taught courses
24 relating to investment management stocks and various
25 things of that type.

1 Q As a result of your background and experience, do
2 you have expertise in the field of how the United States
3 stock market operates?

4 A Yes, I do. I do.

5 Q What is that experience?

6 A Well, again, as I mentioned, I have been employed
7 for the last 20 years as a consultant in this area. But
8 also, prior to that time, I was the -- a founder and a
9 vice president of a company which created and sold
10 securities.

11 And in that connection, I did due diligence
12 work. I was involved in the generation of press
13 releases. I was involved, for that matter, in the
14 trading of the company. And just general, different
15 kinds of tasks that relate to a lot of the issues in this
16 case, including -- I think the thing I was trying to
17 think of and say, perhaps if I have already said it,
18 excuse me for me repeating myself, but I think I also
19 wanted to point out that I had done due diligence work in
20 connection with that.

21 Q And as a result of your education and experience,
22 do you have expertise in the fields of securities and
23 marketing?

24 A Yes, I do.

25 THE COURT: Would this be a good time to take our

1 break?

2 MR. SAYRE: Yes.

3 THE COURT: We will take a ten-minute break until
4 1:30. The jurors should remember not to discuss this
5 case or anything related to the case. Thank you.

6
7 (The following proceedings were held in open court
8 outside the presence of the jury:)

9
10 THE COURT: The jurors are out of the room
11 Dr. Cornew, you can step down from the witness stand. We
12 will take a break in a couple of minutes, but until we
13 do -- before we take a break, are there any issues to
14 address at this time?

15 MR. ROBINSON: Your Honor, the government's motion
16 in limine which the court has addressed with respect to
17 Mr. Knudson also extended to the opinions of Dr. Cornew,
18 and we have the same concerns as reflected in our motion
19 in limine. And to the extent the court would like to
20 address that before we get into those areas or perhaps
21 Mr. Sayre could work around those areas, we would avoid
22 having a lot of objections in front of the jury.

23 THE COURT: All right. How would you suggest we
24 proceed? I would ask -- I could ask Mr. Sayre what
25 opinions Dr. Cornew will state, will be asked to state.

1 MR. ROBINSON: Very well, Your Honor.

2 THE COURT: Does that sufficiently address your
3 motion at this time?

4 MR. ROBINSON: Yes, Your Honor.

5 THE COURT: Mr. Sayre, what opinions will you be
6 asking Dr. Cornew to give to the jury?

7 MR. SAYRE: I will look through the documents
8 here.

9 THE COURT: Why don't we take a five-minute break
10 for my staff, and then I will ask Mr. -- and the parties,
11 then I will ask Mr. Sayre to list the opinions that
12 Dr. Cornew will state.

13 (Brief recess.)

14 (The following proceedings were held in open court
15 outside the presence of the jury:)

16
17 THE COURT: We are outside the jurors' presence.
18 Both sides are here. With respect to Dr. Cornew's
19 testimony, reviewing the government's motion to dismiss
20 and Exhibit 2 to the government's motion to dismiss,
21 which contains -- which consists of a letter dated
22 June 24th, 2008 summarizing Dr. Cornew's testimony, I
23 would tentatively rule as follows:

24 Looking at the first -- the second paragraph
25 on page 1 beginning, he will testify about the stock

1 market for tech stocks, tentative grant motion to exclude
2 not relevant or admissible expert opinion.

3 With respect to the remaining paragraphs on
4 page 1, the third, fourth, fifth and sixth, the court's
5 tentative is to grant the motion to exclude as well for
6 reasons set forth in the government's motion. With
7 respect to the third paragraph, the testimony is not
8 relevant, describing -- for example, insider trading
9 frauds is not relevant.

10 With respect to the remaining opinions in the
11 fourth, fifth and sixth paragraphs in Exhibit 2, this is
12 not admissible expert opinion. Essentially, what the
13 expert -- what defendant seeks to do is have his expert
14 instruct the jury unnecessarily on the law.

15 With respect to the -- page 2 of Exhibit 2,
16 there are five opinions listed in five separate
17 paragraphs.

18 With respect to the first four paragraphs, the
19 court would also tentatively grant the government's
20 motion to exclude. Again, this is impermissible,
21 inadmissible testimony by an expert and should be
22 excluded for all of the reasons set forth in the
23 government's brief. Again, the jury -- the witness seeks
24 to instruct the jury on how they should interpret the
25 law, how they should decide the case. Same ruling with

1 respect to the last paragraph on -- and the last opinion
2 on page 2.

3 In addition, when the defendant refers to
4 methodology, there is no foundation for the kind of
5 methodology the expert would use. Moreover, again, the
6 defense seeks to have the expert impermissibly tell the
7 jury how they should decide what is material or is not
8 material in this case.

9 With respect to the last page of Exhibit 2,
10 the first paragraph states that the witness will testify
11 about e-Connect, the company, its history. The question
12 I have is, is this a proper subject of expert testimony?
13 In this case, is there a sufficient foundation for his
14 knowledge? Wouldn't the appropriate witness to testify
15 about e-Connect be Thomas Hughes, who has already
16 testified?

17 Then continuing on the third page, the second
18 paragraph, the expert's opinion about the indictment and
19 the criminal statutes is not relevant or admissible.
20 This paragraph states that he has prepared charts. I
21 need to learn more about those charts to see if they are
22 admissible and would be concerned as to whether or not
23 they are unduly cumulative of Mr. Knudsen's charts. But
24 I would invite more information from the defendant as to
25 what kind of charts the doctor has prepared.

1 Then, with respect to the third paragraph on
2 page 3, the court's tentative would be to exclude that as
3 well, though I would entertain argument to the contrary.
4 And I would exclude it for reasons set forth in the
5 government's brief.

6 With respect to the fourth paragraph on
7 page 3, the court's tentative would be to exclude
8 pursuant to grounds set forth in the government's papers.

9 With respect to the fifth paragraph on page 3,
10 the court's tentative would be to exclude as well for
11 reasons set forth in the government's brief.

12 And with respect to the final opinion, the
13 final paragraph on page 3, the court would also exclude
14 pursuant to the grounds set forth in the government's
15 brief.

16 Before I turn to the defendant, does --
17 Mr. Robinson, does the government have any argument they
18 wish to highlight or correct?

19 MR. ROBINSON: No, Your Honor. I think that there
20 were some Rule 16 arguments that we made as well, but I
21 would approach those the same way we approached the other
22 ones. It is within the court's discretion. We wouldn't
23 ask that he be prohibited from testifying, but if there
24 are areas of opinion that the court will allow him to
25 testify to which were not -- for which the bases and the

1 reasons were not spelled out in the Cornew Rule 16
2 letter, we would ask that they at least be spelled out
3 before the government is required to cross-examine him.

4 THE COURT: That is a valid request. In sum, as
5 the government asserts in their papers, the expert should
6 not be permitted to testify about how securities laws of
7 the United States operate. He shouldn't be allowed to
8 testify generally as to common fraud schemes. His
9 testimony regarding materiality is also objectionable for
10 the reasons highlighted in the government's brief. The
11 government's objection to testimony regarding the impact
12 of Silver Screen trading on the stock price also has
13 merit and would be sustained.

14 Mr. Sayre, do you wish to be heard in
15 response?

16 MR. SAYRE: Your Honor. Just that, clearly, it
17 appears that we will be entirely eliminating all expert
18 opinion; is that correct?

19 THE COURT: That is not what I stated. First of
20 all, Exhibit 2, to the government's motion is rather --
21 is general, and it doesn't purport to be exhaustive.
22 Furthermore, as I stated, there may be areas where expert
23 testimony by Dr. Cornew is appropriate.

24 For example, as I stated on page 3,
25 Paragraph 2, you refer to the expert's charts. Well, the

1 summary is so vague, I can't tell what you are referring
2 to. The charts may be admissible. That is one of the
3 areas I identified as potentially a proper area for
4 expert opinion.

5 So I would like to hear from you now, or
6 since it is 1:45, if there is some areas of his testimony
7 that you could elicit now in the next 15 minutes, why
8 don't we do that rather than keeping jury waiting? And
9 then once the jury leaves, I can ask for a more detailed
10 recitation by the defense as to what opinions they do
11 seek to elicit from the doctor.

12 MR. SAYRE: All right. And then, Your Honor, in
13 respect to the charts, pretty much what the chart do is
14 simply add more information to the government's charts.
15 That is all they --

16 THE COURT: All right. And you provided a copy of
17 the charts to the court this morning. I have them before
18 me, Exhibits 2340 through 2363; is that right?

19 MR. SAYRE: Yes, Your Honor. And in regard to the
20 time, again, it would be best, of course, as far as me
21 being able to return and prepare for tomorrow, the
22 earlier we break, the better.

23 THE COURT: You have had more than ample time to
24 prepare for trial. That is why I continued the trial in
25 this case multiple times.

1 MR. SAYRE: Yes.

2 THE COURT: I find that additional delays can't be
3 justified. I am trying to accommodate your schedule, but
4 you also want to be heard on certain points.

5 MR. SAYRE: Yes.

6 THE COURT: So I would suggest we stop today at
7 2:00, and you will be heard on these issues before we
8 recess.

9 Are there any areas of Dr. Cornew's
10 testimony that can be elicited now in the next 15
11 minutes?

12 MR. SAYRE: Yes. Yes, there is.

13 THE COURT: And I direct our attention to his
14 charts.

15 MR. SAYRE: All right. Are we referring to the
16 testimony before the jury, Your Honor?

17 THE COURT: Correct.

18 MR. SAYRE: Yes. We can continue with his
19 background, and that would probably easily take the next
20 12 minutes, I would imagine.

21 THE COURT: That doesn't really seem to be -- you
22 know, I am not placing time limits on you, but you have
23 got a jury here. If you waste time in front of the jury,
24 I don't think it is beneficial to your case. Are
25 there -- it appeared to me that you asked a lot about his

1 background before we broke. Maybe you need a little more
2 time. But after that, is there any agreement as to which
3 of the charts he can testify about?

4 MR. SAYRE: Oh, the charts after that. I would
5 have to ask Dr. Cornew. We have been doing quite a bit
6 of changes, and it looks like we will have to do quite a
7 bit of additional changes to suit the motion in limine.

8 So which chart would come first, Dr. Cornew?

9 THE WITNESS: May I approach Mr. Sayre?

10 THE COURT: Sure. Well, perhaps I can shortcut
11 things. Does the government have any objection to
12 inquiry regarding 2340?

13 MR. ROBINSON: Your Honor, I think the government
14 is at a disadvantage in that we have what we understand
15 to be the charts, but we don't have exhibit numbers on
16 them.

17 THE COURT: I apologize. You can --

18 MS. TABET: I placed a set of copies on your table
19 this morning with the exhibit numbers in front of them.

20 MR. ROBINSON: Oh, no. If you put them here, it
21 might be under something. We do --

22 THE COURT: Maybe we can expedite things --
23 Mr. Robinson, any of these exhibits as to which the
24 government has no objection at this time?

25 MR. ROBINSON: Your Honor, if -- I don't know

1 which exhibits relate to which area of the witness's
2 testimony. I would have to speculate. A lot of them
3 appear to relate to areas which the court has tentatively
4 ruled she would exclude.

5 So perhaps the defendant could identify with
6 Dr. Cornew which chart he thinks is an area that the
7 court has not excluded, and I would address that.

8 THE COURT: All right. Thank you.

9 Mr. Sayre or Mr. Cornew?

10 MR. SAYRE: Yes, Your Honor. Did you want me to
11 list the charts?

12 THE COURT: Yes. Which charts? After conferring
13 with your expert, which charts do you believe could be
14 identified and discussed?

15 MR. SAYRE: Okay. Then, there would be
16 Exhibit 2340, which is Nasdaq market overall trading
17 activity 1998 to 2002.

18 THE COURT: Any objection to that exhibit by the
19 government?

20 MR. ROBINSON: I think Your Honor ruled that he
21 should not testify about the stock market for technology
22 stocks in the late 90's and early 2000 because it is not
23 relevant.

24 THE COURT: I need further argument to convince me
25 this is relevant. So putting aside 2340 and 2341 --

1 MR. SAYRE: Yes.

2 THE COURT: -- are there any other exhibits or
3 groups of exhibits?

4 MR. SAYRE: Did we just pass by 2341? I see. And
5 then this next one is Exhibit -- it is a government,
6 Exhibit 104. What we have is an overlay which points out
7 the omissions on that chart. And the overlay is
8 Exhibit 2342.

9 THE COURT: Well, exhibits shouldn't be
10 characterized as a correction of omissions. That would
11 be argumentative.

12 MR. ROBINSON: Your Honor, I don't believe that we
13 offered into evidence 104.

14 THE COURT: All right. That's correct. I will
15 have my clerk check.

16 Mrs. Sanchez, has 104 been admitted?

17 THE CLERK: No. Identified only.

18 MR. ROBINSON: I haven't offered it. I may use a
19 version of it in closing, but it is not admitted.

20 MR. SAYRE: Wouldn't it have to be admitted to be
21 used in closing, Your Honor?

22 THE COURT: I am not addressing the admissibility
23 now. You have got 15 jurors in the jury room that are
24 starting to get really hot, so --

25 MR. SAYRE: Exhibit 101, Your Honor, would be --

1 Government Exhibit 101, I believe, has been entered into
2 evidence. And then the overlay for that exhibit would be
3 Exhibit Number 2343, which is the omissions in the
4 government chart. It is just adding the information that
5 is missing from the chart.

6 THE COURT: All right.

7 MR. SAYRE: Press releases --

8 THE COURT: The clerk should confirm that 101 has
9 been admitted.

10 THE CLERK: Yes, Your Honor.

11 MR. ROBINSON: Your Honor, I don't believe it was
12 admitted in this version.

13 THE COURT: All right. I have two pages. I would
14 have to go back and check my notes.

15 MR. ROBINSON: Yes. I think -- I think they
16 altered an earlier draft, but they did not alter the
17 one that we offered into evidence. So it would be
18 confusing if it was presented.

19 THE COURT: Can we move along right now? We will
20 have to address that.

21 MR. SAYRE: Then it would be on the exhibit --
22 whatever exhibit they have that is replacing this
23 exhibit, the overlay would be the same, Your Honor.

24 THE COURT: We can address that tomorrow.

25 MR. SAYRE: All right.

1 THE COURT: Any other exhibits or areas of
2 testimony?

3 MR. SAYRE: I think, Your Honor, that at this
4 point, it would be confusing, the jury wouldn't know what
5 we were really discussing if we jumped forward that far,
6 if we weren't able to at least produce that Exhibit 101
7 which is now evidently --

8 THE COURT: All right. Do you want to call the
9 jury in and finish the foundation as to his
10 qualifications and --

11 MR. SAYRE: Yes, Your Honor.

12 THE COURT: -- the information he has reviewed to
13 prepare for his testimony? Thank you.

14 And then after that, we will spend as much
15 time as needed reviewing his testimony outside the
16 presence of the jury so we have no delays tomorrow.

17 And if we don't finish today, I can start with
18 both sides tomorrow at 8:00. It is my intention to start
19 at 8:00 tomorrow anyway because after finishing issues
20 relating to Dr. Cornew, I think would be it would be
21 appropriate to continue our discussion of jury
22 instructions and get as much resolved as we can.

23 I don't want to burden either side, but we
24 also have an obligation to see as much as possible that
25 the case is tried within the time estimate given to the

1 jury. And since we are stopping at 2:00 or 2:30, we can
2 start at 8:00, if that is not going to be impossible for
3 counsel and the parties.

4 (The following proceedings were held in open court
5 in the presence of the jury.)

6
7 THE COURT: In the trial, I note the presence of
8 both sides, all the jurors. Please be seated. Ladies
9 and gentlemen of the jury, I'm sorry to have kept you
10 waiting.

11 Dr. Cornew can take the witness stand again.
12 I would simply advise him that he was previously sworn
13 and he is still under oath. Could he please state his
14 name again for the record?

15 THE WITNESS: Yes, Your Honor. My name is Ronald
16 Cornew.

17 THE COURT: Thank you, Dr. Cornew.

18 Please continue, Mr. Sayre.

19 Q BY MR. SAYRE: Yes. Dr. Cornew, as a result of your
20 education and experience, do you have an expertise in
21 the field of securities law -- I'm sorry -- securities
22 violations at the criminal and civil level?

23 A Yes, I do. I have previously testified for the
24 United States Attorney in a white collar crime case. I
25 also have been involved in a fair number of matters

1 involving civil violations or alleged civil violations of
2 securities law.

3 I am also a member of the compliance and legal
4 division of the Securities Industry Association. And I,
5 for that matter, have served as a member of the board of
6 arbitrators on the New York Stock Exchange and of Nasdaq,
7 including as chairperson.

8 Q As a result of your education and experience, do
9 you have an expertise with the securities industry rules
10 and the standards of practice within the industry?

11 A Yes, I do. And that includes the rules of the
12 various so-called self-regulatory agencies, which again
13 are the New York Stock Exchange and Nasdaq. It also
14 includes both federal and state securities laws. And,
15 for that matter, there are other issues of industry
16 practice and custom and so forth that come into play.

17 Q As a result of your education and experience, do
18 you have an expertise in the field of forensic accounting
19 relating to the trading of various kinds of securities?

20 A Yes, I do. I have been involved in analyzing
21 situations where embezzlement has occurred and other
22 forms of white collar crime. I have also done damage
23 calculations in connection with that kind of work and
24 have prepared charts and graphs and things of that type.

25 Q Do you have an expertise in the area of what

1 constitutes due diligence related to the financial
2 reporting industry?

3 A Yes. As I mentioned, back in the early part of my
4 career, I was involved in a company that created and sold
5 securities, and in that connection, I became familiar and
6 was engaged in due diligence work in generating various
7 forms of financial information that were released in
8 connection with that.

9 I also have been a consultant to different
10 brokerage firms where that kind of issue that you are
11 speaking of comes up. For example, disputes between
12 customers and brokers, there is often an allegation that
13 a broker did not properly, you know, do the work that was
14 necessary to present an investment to a client.

15 It is a similar kind of issue. There are a
16 number of different areas where that kind of thing comes
17 up.

18 Q Do you have an expertise in the area of forensic
19 analysis regarding the stock market such that you can
20 render opinions which would produce information that
21 would be relevant to company releases, news sources, and
22 other material related to this?

23 A Yes.

24 Q What is this field referred to as?

25 A Well, the -- what we are dealing with here

1 generally is the issue of what is material, and material
2 is -- sorry for the double use --

3 THE COURT: Answer is nonresponsive and is
4 stricken. The court would also refer to its prior
5 orders. Not relevant.

6 MR. SAYRE: Yes, Your Honor.

7 Q BY MR. SAYRE: What is this form of analysis of news
8 releases and press releases referred to? Is there a
9 particular name or particular type of reference for that
10 particular field of study?

11 A Yes. There is an area that has developed in
12 securities in the last 10 years or so that deals with --
13 it is something called an event analysis. And it deals
14 with what it is that really moves stock prices. And,
15 basically, things like earnings releases are dealt with
16 as well as new product releases and revenue increases.
17 Those are the things that event analysis shows moves the
18 market.

19 Q Do you have an expertise in analyzing the kinds of
20 offenses charged against a defendant and the code of
21 regulations related thereto?

22 A I'm sorry. I did not hear your question,
23 Mr. Sayre.

24 Q Do you have an expertise in analyzing the types of
25 offenses that are related to the issue in this case?

1 THE COURT: Objection. Sustained in light of the
2 court's rulings. 402, 403.

3 Q BY MR. SAYRE: Do you have an expertise in the area
4 that constitutes due diligence related to the financial
5 reporting industry?

6 A Yes.

7 Q Do you have an expertise in the area of forensic
8 analysis regarding the stock market such that you can
9 render opinions of whether the information released by
10 companies and news services have had a -- I don't know if
11 this word is impermissible, but material effect?

12 MR. ROBINSON: Objection, Your Honor.

13 THE COURT: Sustained. Irrelevant. 402, 403.
14 Referring to the court's rulings.

15 Q BY MR. SAYRE: Do you have an expertise analyzing the
16 kinds of offenses charged in the indictment against the
17 defendant and the code of federal regulations related
18 thereto?

19 A Yes.

20 Q Do you have an expertise in the field of stock
21 frauds in their various forms?

22 A Yes.

23 Q Have you been qualified as an expert in respect to
24 the fields mentioned above?

25 A Yes.

1 MR. ROBINSON: Objection. Compound.

2 THE COURT: Sustained.

3 Q BY MR. SAYRE: Do you have an expertise in the field
4 of stock fraud litigation?

5 A Yes.

6 Q Are you an international lecturer and professor
7 regarding stock frauds and the litigation related to
8 stock frauds?

9 A I have lectured on that. I have lectured on that
10 outside of this country, so the answer is yes.

11 Q Have you testified in court as an expert witness in
12 either or all of the above areas in which you have an
13 expertise?

14 MR. ROBINSON: Objection. Compound.

15 THE COURT: Sustained.

16 Q BY MR. SAYRE: Have you testified as an expert
17 witness as a forensic analyst regarding stock issues?

18 A Yes. I think I answered that. I have done that
19 kind of work, presented charts and damage calculations
20 and things of that type.

21 MR. SAYRE: Your Honor, I would like to request --

22 THE COURT: Have you finished questioning the
23 witness about his background and qualifications,
24 Mr. Sayre?

25 MR. SAYRE: Yes, I have.

1 THE COURT: All right. Then the jury would be
2 excused until tomorrow at 8:30. Please remember not to
3 discuss this case or anything related to this case with
4 anyone. Thank you very much. We will see you tomorrow
5 at 8:30.

6
7 (The following proceedings were held in open court
8 outside the presence of the jury:)

9
10 THE COURT: Thank you very much. The witness can
11 step down.

12 We are outside the jury's presence, so we can
13 continue our discussion of the government's motion in
14 limine regarding the expert testimony of the doctor. I
15 would refer to the government's brief commencing on
16 page 7. Their objection number 1, as I have indicated,
17 is -- should be sustained. Testimony regarding
18 applicable securities laws would usurp the role of the
19 court in instructing the jury on the applicable law.

20 With respect to objection number 2 relating to
21 testimony about common fraud schemes, the government's
22 objection also has merit. This is on page 7 commencing
23 on line 24. The testimony would not be relevant and
24 would not be helpful to the jury and, therefore, not
25 admissible.

1 With respect to the objection on page 8
2 commencing on line 4 regarding Cornew's testimony
3 regarding materiality, that is also objectionable, and
4 the government's objection has merit and will be
5 sustained. The testimony first would improperly tell the
6 jury how it should decide the issue of materiality. It
7 would usurp the jury's function.

8 And the total mix testimony contemplated does
9 not have support in the law, given the facts of this
10 case. And I would refer to the legal discussions set
11 forth in the government's brief, page 9, and the cases
12 cited in particular at the bottom of page 9, including
13 the Zweig case, Z-W-E-I-G.

14 With respect to the fourth item objected to on
15 page 10, commencing on line 1, testimony regarding
16 e-Connect, the company, its history and purported
17 activities, as indicated, the court would sustain that
18 objection on lack of foundation. Dr. Cornew is not a
19 percipient witness, and while an expert can rely on
20 hearsay facts to support his opinion, he cannot be called
21 simply to introduce otherwise inadmissible hearsay to the
22 jury. There is no foundation for expert opinion
23 testimony as to e-Connect and Hughes. And Cornew's
24 testimony would not be helpful to the jury. Therefore,
25 not admissible.

1 The final area objected to is item number 5
2 in the government's brief, impact of Silver Screen
3 trading on stock price. The government contends this is
4 not relevant or lacks probative value and therefore
5 should be excluded under 403. I would invite further
6 argument on this and further argument on the charts
7 prepared by Dr. Cornew that Mr. Sayre wishes to
8 introduce.

9 Mr. Sayre.

10 MR. SAYRE: Yes. Well, in regard to -- from what
11 I understand, I am trying to make notes, but I understand
12 that item 5 is an issue that you would like to hear
13 further argument. Was there other items?

14 THE COURT: It is up to you. I gave you my
15 tentative, and I am giving you time to respond.

16 MR. SAYRE: With regard to the impact on Silver
17 Screen trading on stock prices, it is just a general
18 overall presentation of the prosecution's charts that
19 seem to indicate that the stock prices were affected by
20 the sales and the purchases of Silver Screen Industries'
21 stock.

22 So if they are not refuted by implication -- I
23 realize the government's case is just implying that IFR's
24 releases -- well, I am not sure if it is implying that,
25 but my understanding is that he says that IFR's releases

1 or the omissions of Silver Screen Industries from IFR's
2 releases have caused the stock to increase.

3 We need to somehow refute that, and if we are
4 not allowed to refute it by proving, at least on a
5 technical level, that this did not occur both in the buys
6 and sells which are an issue of the case and also the
7 press releases themselves and the impact that the
8 omission of Silver Screen Industries had on the stock
9 price of e-Connect, Your Honor.

10 THE COURT: All right. What is the government's
11 response to Mr. Sayre's assertion that this evidence
12 regarding the impact of Silver Screen trading on the
13 stock price is relevant and needed to respond to the
14 evidence introduced by the government in its case in
15 chief?

16 MR. ROBINSON: Your Honor, neither the indictment
17 nor opening statement from the government nor the
18 evidence from Loveman or any of the other witnesses, I
19 believe, was submitted in support of a theory that simply
20 the trading, the purchasing and selling of stock in the
21 Silver Screen account caused a manipulation of the
22 market. There are cases that can be brought on that kind
23 of a theory, but this is not one of them.

24 So the reason we argued that under 403, that
25 this would be -- result in confusion of the issues and

1 undue delay is because it would be putting in what
2 appears to be a complicated analysis with a number of
3 parts to address what has not been an issue in dispute in
4 this case.

5 We have never said and I don't believe Loveman
6 or anybody else has said that because the defendant
7 caused a certain amount of stock to be sold or purchased
8 on a certain day, that conduct caused a change in the
9 price of e-Connect.

10 Our focus has always been on him putting out
11 the IFR releases and whether or not they were misleading
12 to the public and done with intent to defraud. We didn't
13 even have -- and I think we were careful, we didn't have
14 Loveman say that a particular release caused a particular
15 increase in the price of the stock. Frankly, I think
16 that's a very difficult issue to argue, and if we ever
17 argue it, it would be at a later point in these
18 proceedings. But we have been careful to avoid that, and
19 so we have not invited it. We have not alleged it. We
20 have not tried to prove it.

21 And so I don't think that injecting that into
22 the trial would serve to do anything other than confuse
23 the jury and result in an undue consumption of time on
24 matters that are not at issue.

25 THE COURT: It would be easier to address the

1 government's objection if the court knew more about what
2 Dr. Cornew is going to testify to pertaining to the
3 impact of Silver Screen trading on stock price.

4 Perhaps you can explain, Mr. Sayre. In the
5 disclosure to the government on June 24th, which is
6 Exhibit 2 to the government's motion, it is stated on
7 page 3 that the expert will testify about charts he has
8 prepared and will testify as to the impact of Silver
9 Screen orders on the market and activity of the market.
10 Perhaps you can be more specific because here -- the
11 government's objection that there was insufficient
12 disclosure has merit.

13 MR. SAYRE: Yes, Your Honor. The government
14 charts inferred by indicating that the purchases occurred
15 at certain times, and then they have the bars of the
16 price of e-Connect rising, and they infer that the IFR
17 releases caused the increase in value by only isolating
18 the IFR reports as well as the Silver Screen Industries'
19 purchases.

20 So clearly, the charts speak for themselves,
21 as Mr. Robinson has said so many times today. And that
22 is going to speak to the jury just as loudly as any
23 testimony would. And we need to contradict the
24 implications of the charts.

25 And what we will be doing in that regard is

1 simply adding the information that has been left out by
2 the government. And that is really the intention of the
3 charts that we have in regard to the charts that will be
4 presented by Dr. Cornew.

5 THE COURT: And what opinions will he be asked to
6 give regarding these charts? What conclusions?

7 MR. SAYRE: The conclusions will be entirely
8 statistical in regard to the buys and sells of the
9 e-Connect stock by Silver Screen Industries. So it will
10 show the impact on the market that these buys and sells
11 had by statistical analysis of the actual fluctuation
12 price before, during, and after these trades occurred.

13 And it would be very brief. We don't intend
14 to take more than 15, minutes I don't believe. It is
15 just showing the documentation of the statistics to prove
16 that the market did not move and was not subject to any
17 type of influence by these trades.

18 MR. REED: Your Honor, Dr. Cornew indicated that
19 he can give you more details if you wish them.

20 THE WITNESS: If it would help the court.

21 THE COURT: All right. If there is no objection.

22 THE WITNESS: Your Honor, I have not been in here
23 to hear all the back and forth, but I understand that the
24 issue of the mix of information as it relates to this
25 case, that the court has indicated that that testimony

1 can be received on it, but that it would not be --

2 THE COURT: It would perhaps be more appropriate
3 if, instead of making an argument to me, which would
4 really not be permissible, if you would just outline the
5 testimony that you plan to give in this area. This would
6 serve several purposes. I could assess the defendant's
7 position that it is admissible, and it would also give
8 the government the Rule 16 disclosure they are entitled
9 to.

10 THE WITNESS: Yes. The purpose of the charts is
11 to show that a reasonable investor would not have been
12 persuaded at all by the evidence that appears there
13 relating to Mr. Sayre's IFR press releases, that he
14 should consider or would purchase shares in that
15 particular stock.

16 THE COURT: And which charts are you referring to?

17 THE WITNESS: Well, it depends somewhat on what
18 Mr. Robinson has in. But we are clearly referring to
19 chart number 101 and perhaps another one that I do not
20 know the number of, but it is the one that has the
21 two marks on it that look like bolts of lightning
22 striking.

23 MR. ROBINSON: Neither of those are in evidence,
24 Your Honor.

25 THE WITNESS: Have they been shown to the jury?

1 MR. ROBINSON: If they are not in evidence, they
2 don't get shown to the jury.

3 THE COURT: I am asking the questions here,
4 Dr. Cornew. So what charts would you seek to introduce?

5 THE WITNESS: 101 and an overlay to it. I don't
6 have the charts in front of me, but -- I have the charts
7 in front of me now.

8 Exhibit 101 and an overlay to it.

9 THE COURT: What do you mean, what overlay? Is it
10 one of your exhibits?

11 THE WITNESS: There is an acetate overlay that
12 will go on top of this particular chart.

13 THE COURT: All right.

14 THE WITNESS: That would be one thing we would
15 seek to introduce.

16 THE COURT: And for what purpose?

17 THE WITNESS: For indicating the insignificance of
18 Mr. Sayre's press releases in view of the actions of
19 ECNC.

20 THE COURT: What do you mean by insignificance?

21 THE WITNESS: Well, Your Honor, there are
22 something in excess of 25 other press releases at the
23 same time, and our view is that his release of those
24 press releases would not have had an impact on a
25 reasonable investor.

1 THE COURT: So that the -- in other words, the
2 press releases were not material?

3 THE WITNESS: Yes. But I am not going to say
4 anything about law, Your Honor. You are the expert of
5 law here. I am just going to say what the facts are and
6 then the legal interpretation.

7 THE COURT: Any other charts?

8 THE WITNESS: Yes. There is another set of
9 exhibits -- again, I am hampered by lacking the numbers
10 on these, but they are these charts right here which show
11 relevant --

12 THE COURT: I can't see. If you could give me an
13 exhibit number. Whose exhibit are you referring to, a
14 government exhibit?

15 THE WITNESS: No. This now is an exhibit that has
16 been prepared under my direction. And it shows that for
17 the ten days from February 28th through March 10th, the
18 market went up every morning. So any inference from
19 previous testimony that the four press releases of
20 Mr. Sayre caused those rises has no basis. That is the
21 nature of that charge.

22 THE COURT: And looking at the exhibits before me,
23 just for the record, it seems like you're referring to
24 2352.

25 THE WITNESS: 2351, Your Honor.

1 THE COURT: 2351. Okay. Thanks. All right.
2 Please continue.

3 THE WITNESS: Yes. And then there is another
4 exhibit --

5 MR. ROBINSON: Your Honor, if I may --

6 THE COURT: Yes.

7 MR. ROBINSON: -- he has not given the reasons for
8 that conclusion. He has just stated the conclusion and
9 said here is a chart.

10 THE COURT: Well taken. What is the reason for
11 this conclusion that -- as you assert, that the IFR
12 reports did not --

13 THE WITNESS: The answer is that what a reasonable
14 investor relies upon, based upon the event analysis work
15 that I told you about before, is information relating to
16 earnings increases or revenue increases or new products,
17 there is an unending series of releases from ECNC in this
18 period relating to those subjects. That, we believe, is
19 the reason why the price rose.

20 THE COURT: So this relates to the materiality
21 issue?

22 THE WITNESS: Well, yes, but I am not going to
23 introduce any -- we will be introducing evidence but not
24 making any decision on that issue.

25 THE COURT: Mr. Robinson.

1 MR. ROBINSON: I would like to know what is the
2 premise for that conclusion, that a so-called reasonable
3 investor pays attention to one thing and not another. I
4 mean, there is no empirical data that has been supplied
5 in any Daubert sense to show a reliable methodology. He
6 reached that conclusion, but he hasn't provided any
7 reasons why that conclusion has any validity.

8 THE COURT: Dr. Cornew, what is the basis for that
9 conclusion?

10 THE WITNESS: The basis of it is my experience as
11 a teacher and as someone working in this field as to what
12 it is that makes prices rise.

13 THE COURT: Are you relying upon any empirical
14 data or any methodology in arriving at this decision?

15 THE WITNESS: I am relying on my knowledge and
16 experience.

17 MR. ROBINSON: Your Honor, that makes it. I would
18 have a whole slew of Daubert objections on an expert who
19 just says, based on my experience, I am a litmus test for
20 what a reasonable investor would do.

21 THE COURT: I would agree. The defense would have
22 to make a better showing of the basis for the decision
23 to -- the basis for the opinion to have it admissible,
24 more than it is based upon my experience.

25 But please continue. I would like to

1 hear --

2 THE WITNESS: There is another exhibit here, 2363
3 is written at the bottom of it, Your Honor.

4 It shows what really happened to poor
5 Mrs. Cattani. It is an exhibit that shows her buy of 75
6 shares, and immediately afterward it, there is a very
7 large volume of short selling that is the reason she lost
8 the money that she did. That plus the fact that the
9 prices were elevated through the press releases of ECNC.

10 MR. ROBINSON: Your Honor, we would to object to
11 that because, first of all, the issue wasn't why she lost
12 money. She just testified that she read the opinion and
13 it was important to her, and she explained why it was
14 important to her in her purchase. This is not a civil
15 class action where she was claiming damages and we are
16 trying to show what was the causality of her loss. She
17 was called simply to testify about what she read and why
18 it was important to her as an investor. And she
19 testified about what was in the IFR releases that was
20 important to her.

21 So on 403 grounds, I would object that some
22 after the fact postmortem of what loss she sustained
23 isn't important. I mean, if it is just for impeachment
24 purposes, he could have impeached her at the time, asking
25 about her loss and whether it caused any bias in her

1 testimony. But I don't see what the relevance, or, given
2 the 403 considerations, what the justification is for
3 this complex analysis about what happened to her trading
4 after she made her decision to purchase e-Connect stock
5 after reading the IFR opinion that she testified to.

6 THE WITNESS: May I respond?

7 THE COURT: You are not an advocate in this case.
8 I will hear from Mr. Sayre.

9 MR. SAYRE: Yes, Your Honor. In that regard, I am
10 fairly certain Mr. Robinson is likely to refer to
11 Mrs. Cattani having suffered a loss because of the IFR
12 opinion she read. And certainly, the inference is
13 already there. The inferences are there in regard to
14 everything that the government has stated in their
15 charts.

16 And the inferences and the implications of
17 what they are saying is clearly that the omission of
18 Silver Screen Industries caused the stock to rise and
19 caused to confuse people so terribly that they bought the
20 stock by some -- I don't know, generally speaking, he is
21 saying that the omission of Silver Screen Industries
22 caused all the problems with e-Connect. That was what
23 the implications on those charts clearly indicate. And
24 we need to somehow contradict that through common sense
25 and logic.

1 THE COURT: I would sustain the objection under
2 Evidence Code Section 403.

3 Reviewing Ms. Cattani's testimony given on
4 July 3rd, 2008 and commencing at 1:38 in the afternoon,
5 the focus of her testimony was essentially that she saw
6 the IFR opinions regarding e-Connect and she relied on
7 them in purchasing the stock and she placed weight on the
8 representation in the IFR opinions that the opinions were
9 independent and that the author of the opinion, IFR, did
10 not hold stock in e-Connect.

11 I don't believe the -- although there was
12 evidence as to the price she paid and the trading, I
13 understand that the government will not be arguing that
14 she suffered a loss.

15 MR. ROBINSON: That is not an element of the
16 offense, Your Honor, and we are not going to argue it as
17 to her. I will go back and look at the transcript, but I
18 don't think we got into -- she ultimately sold her
19 shares, but we didn't even have much testimony on what
20 happened in that regard.

21 THE COURT: She did testify that she wasn't paying
22 attention to price and she placed a limit order and the
23 price was going up quickly past her limit order. She
24 placed another limit order. It was cancelled. She
25 finally put in a market order because the stock kept

1 going up. She was influenced by the IFR opinion that
2 said 20 to \$25. And on March 8th, she paid \$19.75 higher
3 than she expected to.

4 If you can -- my ruling is to sustain the
5 objection under 403, finding that the probative value as
6 to Ms. Cattani is quite limited and outweighed by the
7 dangers set forth in 403, including confusion of issues
8 and wasting time -- confusion, unfairly so.

9 Please continue, Dr. Cornew, to list the
10 charts you wish to introduce and your opinions. Then I
11 will hear argument from the government and the defendant.
12 And we will start at 8:00 tomorrow if there is anything
13 in addition counsel or the government or -- or the
14 defendant wishes to add, I will hear that at
15 8:00 o'clock.

16 Yes.

17 THE WITNESS: Let me say that with regard to the
18 exhibits, the final conclusion is going to be based on
19 all the factors in the charts, especially the total mix
20 of information, but even without it --

21 THE COURT: Can you -- can you -- since they are
22 not listed in any disclosure to the government, can you
23 list the charts that you intend to introduce and the
24 opinions that you intend to state based on those charts?
25 Is that --

1 THE WITNESS: I think that would be fair if we
2 could do that tomorrow morning.

3 THE COURT: No. Now is the time.

4 Does that address the government's Rule 16?

5 MR. ROBINSON: Yes, Your Honor. Because then we
6 will have an opportunity to prepare --

7 THE COURT: And also, I will be better able to
8 assess the government's arguments and the defendant's
9 arguments on the admissibility of the expert's testimony.

10 THE WITNESS: Your Honor, if I heard correctly,
11 you have ruled every exhibit to be inadmissible.

12 THE COURT: That is not correct. And I was going
13 to call you counsel. You are behaving like an advocate.

14 THE WITNESS: I am trying not to.

15 THE COURT: With all due respect, I need to know
16 what opinions the defendant intends to elicit from you
17 and the basis of those opinions. And it would be of
18 great assistance if you, Dr. Cornew, or the defendant
19 would list the opinions and the bases of the opinions and
20 also, to the extent possible, cross-reference to the
21 exhibits you have provided the court so I can appreciate
22 the significance of the exhibits and properly consider
23 the defendant's arguments that the exhibits are relevant
24 and admissible.

25 THE WITNESS: All right. It has been pointed out

1 to me that there were some charts that were excluded when
2 I went through this. Let me try to respond directly to
3 your request.

4 THE COURT: I was handed -- another was a group of
5 exhibits this morning entitled Dr. Cornew's exhibits,
6 Exhibit 2340 through 2363. In addition to your opinions,
7 the bases of the opinions, it would help if you would
8 also address the significance of these exhibits to your
9 opinions.

10 THE WITNESS: There are a group of charts under
11 Exhibit Number 2346, I believe --

12 THE COURT: All right.

13 THE WITNESS: -- which -- there is one of them for
14 each day that Mr. Sayre made an order. They show that
15 his order had no impact on market price. And these are
16 intended to be a defense against the argument that there
17 was manipulation here.

18 Again, it is fundamental that evidence showing
19 that his actions did not move the market, whether it was
20 his purchases, as they were, his sales, or beyond that,
21 that his press releases moved the market. If none of
22 those things are true, and I believe we are in a position
23 to show them, then it substantially enhances his defense,
24 I believe.

25 THE COURT: All right. With respect to 2346, how

1 was it prepared?

2 THE WITNESS: It was prepared under my direction
3 from data that was made available from FINRA, which is
4 the new name for Nasdaq. They maintain a database in
5 which it is possible to get a disk with all the prices of
6 ECNC and also the changes in price of market maker,
7 changes in their bid ask price. We have charts on those
8 things.

9 THE COURT: So I fully appreciate this chart, can
10 you exhibit -- with respect to this chart, can you go
11 through just across the chart what is lined, what is
12 date, what is our time, what is EX time, what is the
13 control number, ST, volume, price, et cetera?

14 THE WITNESS: I would be glad to do that, Your
15 Honor.

16 This again is a chart for January 31, 2000.
17 It shows prices from that data source I just mentioned of
18 Silver Screen -- sorry -- of ECNC both before and after
19 the 10,000 share purchase. The line number on the left
20 indicates the transaction number and the sequence for
21 that day. I do not know if it begins with one, but every
22 number, every line has a unique number.

23 THE COURT: All right.

24 THE WITNESS: The date, of course, is all the date
25 of January 31, 2000. The R time refers to when the

1 transaction is actually being reported. The transaction
2 is going to be on that line. The X time refers to when
3 the transaction was actually executed. Those times are
4 typically very close, but sometimes they are not.

5 Sometimes a trade will be an out trade. It won't be
6 matched perhaps until the end of the day. Then you will
7 have a recording of something that happened much earlier.

8 The control number is a number that I do not
9 know the nature of, but it is obviously important to NASD
10 to pin down this particular transaction.

11 Now, the ST code that appears there, there is
12 a so-called regular way in which the transactions occur,
13 and that is what the R is and, in most cases, that is
14 what you are going to find in that column.

15 The M, frankly, I have forgotten what it is
16 because it is really the R'S that are were going to be.
17 I say that, but I see I am wrong. I see on that line
18 that the M is there. And frankly, at this moment, Your
19 Honor, it is not in my head what that is.

20 The volume is 10,000, indicating that the size
21 of the transaction occurring at that instant of time,
22 which happens to be, if you go back over to the line,
23 9:34 and 43 seconds in the morning. That is Eastern
24 Standard Time. So at 9:34 -- sorry -- 9:34:46 a.m.,
25 10,000 shares were traded.

1 THE COURT: I understand. I still don't
2 understand what the ST is. I haven't heard any
3 information as to the ST code, what R or M is. But I
4 understand your point.

5 THE WITNESS: It shows that there is no change in
6 the price at that moment. That is what it shows.

7 THE COURT: All right. And you have that --

8 THE WITNESS: For each one of these days.

9 THE COURT: Okay. I see that on Exhibit --

10 THE WITNESS: Each day, there was an order from
11 Silver Screen.

12 THE COURT: 2347, 2348 --

13 THE WITNESS: Yes.

14 THE COURT: -- 2349 through 2350.

15 THE WITNESS: Yes.

16 THE COURT: Okay. I understand that point. What
17 about -- and I will consider the government's objection
18 on grounds of relevancy and 403 and Mr. Sayre's argument
19 to the contrary that this is, in fact, correct,
20 Mr. Sayre, in rebutting the assertion that you engaged in
21 a scheme to defraud. It is also responsive to
22 Mr. Loveman's testimony and the exhibits introduced
23 through Loveman; is that correct?

24 MR. SAYRE: That's correct, Your Honor.

25 THE COURT: Continue, please. I will reserve

1 ruling on this.

2 THE WITNESS: 2344 -- 2344 is a similar one, but
3 this deals with the sale on March 9th.

4 THE COURT: All right. I think that's fairly
5 clear.

6 THE WITNESS: It's a similar thing, yes, that his
7 sale did not drive the market down.

8 THE COURT: You have explained 2346 through 2350.
9 Any other charts you intend to introduce?

10 THE WITNESS: Yes. There is one here that's
11 called 2361 where you see all the bid ask prices of the
12 various market makers on March the 3rd, which is the
13 one day where one of Mr. Sayre's press releases is
14 released during the trading day. We have an opportunity
15 there to see what the impact of that press release was on
16 the market makers.

17 And once again, after this is presented, I am
18 sure someone will argue that it shows that there was no
19 impact on the market makers. And that is particularly
20 important because those people make a living following
21 the market and paying attention to any news that matters.

22 THE COURT: Thank you. What is the government's
23 position on Exhibit 2361 and anticipated testimony by the
24 expert on 2361?

25 MR. ROBINSON: Same position as we had before

1 under 403, Your Honor. We think it would just confuse
2 the issues. We have never claimed that the buying and
3 selling of stock by Mr. Sayre caused a change in the
4 price of the stock.

5 The focus of the case is on whether or not
6 the Independent Financial Reports releases are
7 misleading. And to the extent that we had a chart that
8 showed that there was an increase in the price of the
9 stock during the period, it was just a way of
10 illustrating that he would buy and sell and gain as the
11 price of the stock went up.

12 MR. SAYRE: Your Honor, I believe the chart also
13 shows, and Dr. Cornew can correct me if I am wrong, that
14 the IFR releases also had no effect on the market makers
15 or the price that they were quoting for the stock.

16 I believe those charts were used for the
17 same --

18 THE COURT: What about the government's
19 position --

20 THE WITNESS: I just explained that --

21 THE COURT: Excuse me. I am addressing the
22 defendant, Dr. Cornew.

23 Mr. Sayre, what about the government's
24 position that they are not contending that you had an
25 impact on the market, the stock prices are only admitted

1 and only relevant to show that you bought when the stock
2 price went up?

3 MR. SAYRE: All right. So I --

4 THE COURT: Not to show that you caused
5 fluctuation in the stock prices or caused an increase in
6 the stock price.

7 MR. SAYRE: All right. And the government is
8 contending that the IFR reports did not cause any
9 fluctuation in the stock price? Am I understanding that
10 correctly?

11 MR. ROBINSON: We are taking the position that we
12 don't have to prove that as an element of the offense,
13 and I think that's consistent with the court's jury
14 instructions.

15 THE COURT: Is the government going to argue that
16 the IFR reports caused the stock prices to go up?

17 MR. ROBINSON: No, Your Honor. We have never
18 argued that it was a cause. We have said it coincided
19 with the increase in price and he profited as the price
20 went up. We have argued that -- and we will argue that a
21 reasonable investor would find that information material,
22 but we haven't tried to establish through any empirical
23 evidence a causal link that a certain press release or a
24 certain opinion caused a certain price change in the
25 stock.

1 So -- and frankly, this other thing about
2 somehow market makers are the litmus test for a
3 reasonable investor, I have never seen any case law that
4 held that to be the case.

5 THE COURT: Mr. Sayre.

6 MR. SAYRE: I suppose if the government isn't
7 contending that the IFR release is causing the increase
8 in stock price, if that could be stipulated, then, there
9 would be no need to disprove it.

10 Again, if the government is going to just
11 remain moot on the subject and show the charts which
12 clearly imply, in fact, not only imply, their charts
13 misleadingly indicate that the IFR reports caused every
14 singular increase in e-Connect stock price, because they
15 don't even include any of the other materials that were
16 out on the market at the time.

17 THE COURT: All right. With respect to 2361, the
18 court would sustain the government's objection under 403,
19 considering the content of 2361. And the reference to
20 the market makers and the market maker identifiers, I
21 find limited probative value in any event and that it is
22 substantially outweighed by the danger, particularly of
23 undue delay and waste of time, and also substantially
24 outweighed by the danger of unfair prejudice. The
25 objection is sustained to 2361.

1 Doctor, do you have any other exhibits or
2 charts or other opinions that we haven't addressed?

3 THE WITNESS: Did we cover Exhibit 109, Your
4 Honor?

5 THE COURT: Government's Exhibit 109? Is that in
6 evidence, Mrs. Sanchez?

7 THE CLERK: I don't show it, Your Honor.

8 MR. SAYRE: Your Honor, there was one question I
9 had. I believe the prosecution had mentioned that there
10 was a change to chart 101. We could cover that chart now
11 if we a copy of the changes to chart 101.

12 THE COURT: I will review the evidence as to 101.
13 But 109 isn't in evidence.

14 So please move on, Dr. Cornew. Any other
15 opinions you intend to state, and please cross-reference
16 to the exhibits?

17 THE WITNESS: Yes. Did you make a decision with
18 regard to 2363? This is the one that shows that Steven
19 Sayre, through trading at Silver Screen, did not cause
20 the losses.

21 THE COURT: I don't believe you have mentioned
22 2363 yet.

23 THE WITNESS: Let me do that. It shows her 75
24 share buy. Perhaps we could put this on the graph.

25 MR. ROBINSON: I believe, Your Honor, this was the

1 Cattani-related exhibits.

2 THE COURT: I apologize, yes. I did exclude that,
3 I'm sorry, under Evidence Code 403.

4 MR. ROBINSON: Your Honor, I think that 2362 is
5 still left. And perhaps we could learn whether or not
6 that would be at issue.

7 THE COURT: Thank you.

8 Doctor, will you be seeking to introduce --
9 to refer to and testify about 2362 and draw conclusions
10 from 2362? If so, can you explain what it is?

11 THE WITNESS: Yes. 2362, every one of those bars
12 is another press release that was issued at the time of
13 Mr. Sayre's press releases and shows the total set of
14 things that a reasonable investor would be considering at
15 that point in time in determining whether or not he or
16 she would be likely to buy the shares of e-Connect.

17 THE COURT: And what opinions will you be
18 rendering in connection with 2362? What additional
19 opinions?

20 THE WITNESS: That a reasonable investor under
21 these circumstances would not have been influenced at all
22 by the press release or three press releases of Mr. Sayre
23 that had the offensive language, let alone by that
24 language in those press releases, for reasons that I
25 have -- that I need to testify to before Your Honor would

1 understand why that is relevant.

2 THE COURT: And what reasons?

3 THE WITNESS: Well, the reason again goes back to
4 what I was telling you about event analysis, it being the
5 fact that you have earning surprises, revenue surprises,
6 and the release of information relating to new products
7 being the things that move market makers and markets.
8 Those are coming out in an unending succession from
9 ECNYC, as an analysis of that would show.

10 THE COURT: Excuse me. Doctor, if you see me
11 looking to my right, I am looking at real time, the
12 reporter's printout of what you are saying. So I am not
13 disregarding you. I am just listening to and reading
14 what you are saying.

15 Thank you, please continue.

16 THE WITNESS: Mr. Sayre has felt it is vital to
17 his defense to be able to show this environment and from
18 that, be able to infer, even under the Tarrallo standard,
19 that a reasonable investor would not be purchasing based
20 upon his press release.

21 THE COURT: All right. What is the government's
22 position?

23 MR. ROBINSON: Your Honor, I believe that the
24 court has previously ruled in its law of the case that in
25 order for the government to establish the offense --

1 offenses charged here, it is not necessary to show that
2 the price of the stock was affected, that anybody was
3 injured, or that there was a gain taken.

4 And in connection with the materiality motion
5 that the defendant made that the court denied, I believe
6 that the court ruled on that basis. It seems to me that
7 the ultimate conclusion which the witness wants to derive
8 is that if he can show that the market didn't change,
9 therefore, it is impossible for what Mr. Sayre did to be
10 material, and I think that's absolutely improper.

11 THE WITNESS: Your Honor, we are talking about
12 press release --

13 THE COURT: Wait. Wait. Doctor, I am not
14 addressing you. You are not an advocate. I would like
15 to hear from Mr. Robinson, and then I'd like to hear from
16 Mr. Sayre.

17 THE WITNESS: He is misunderstanding what I said.

18 THE COURT: You may be seated, sir.

19 Mr. Robinson, please continue.

20 MR. ROBINSON: Your Honor, it seems to me what the
21 premise of the testimony is and why it would in effect be
22 a misstatement of the applicable law is that the witness
23 wants to give an opinion that ultimately tells the jury
24 you cannot find that what Mr. Sayre did here with regard
25 to the IFR opinions was material because my opinion is,

1 based on my experience, that no empirical analysis that I
2 have given to the government to assess, based on my
3 experience, I can tell you that anything he said didn't
4 affect the price of the stock.

5 And that is simply not a legal requirement for
6 establishing the elements of the offense in this case,
7 and it would invade the province of the jury by saying
8 that this expert has concluded that what Mr. Sayre said
9 did not matter as an empirical matter because of some
10 analysis which I have yet to hear explained other than it
11 has been labeled "my experience."

12 THE COURT: So the government's objections include
13 irrelevant and --

14 MR. ROBINSON: Improper opinion evidence.

15 THE COURT: -- improper opinion evidence?

16 MR. ROBINSON: And I would say one thing, Your
17 Honor, also. If we had received the Rule 16 disclosure
18 which would have indicated that there was going to be
19 this kind of testimony on this kind of basis, we might
20 have considered hiring our own expert who has a different
21 litmus test for materiality and a different methodology.
22 But we didn't get that disclosure. Now we are hearing
23 about these things for the first time with real -- with
24 no real articulation that I think would satisfy Daubert
25 as to the reliability of this.

1 Also, under Daubert, I am sure the court knows
2 that an expert's opinion which doesn't take into account
3 all of the facts is not reliable. And I have heard
4 nothing about his opinion that takes into account many of
5 the facts in this case, including that we have had a
6 witness who testified that she certainly found it
7 material.

8 But setting that aside, I just don't
9 understand this analysis. There is no empirical basis
10 for offering it. It is just a summary conclusion that,
11 based on his experience and looking at an event analysis,
12 he has decided there was no event here resulting from
13 Mr. Sayre's opinions that is material.

14 I just think under 702, 403, the fact that he
15 is invading the province of the jury on a legal
16 conclusion, it is entirely improper. He needs to lay a
17 foundation for that kind of opinion, and he hasn't done
18 it.

19 THE COURT: Mr. Sayre.

20 MR. SAYRE: Yes, Your Honor. I don't believe that
21 Dr. Cornew intends to speak to the issue of materiality.
22 What he wants to -- and he would exclude that from his
23 language. But what he wants to do is simply show what
24 effect the IFR opinion this had on the market by
25 empirical research and statistics, because clearly,

1 despite what Mr. Robinson says that he is not going to
2 claim that it caused injury or loss or gain or any of
3 these issues, the whole concept of materiality becomes
4 irrelevant. If it didn't cause anything, then why is it
5 material? Obviously, a material fact has to have some
6 form of causation.

7 THE COURT: Looking at 2362 and considering the
8 Exhibit 2 to the government's motion and your argument
9 and the doctor's statements, the court will sustain the
10 objection to 2362, defendant's exhibit, and testimony
11 regarding it.

12 I find that it is not relevant or its
13 probative value is minimal and outweighed by -- or de
14 minimus and outweighed by factors set forth in 403.

15 Moreover, the testimony is not admissible
16 under Evidence Code 702. It is improper opinion
17 testimony not shown to be reliable, invades the province
18 of the jury, and there is a serious Rule 16 issue as
19 well.

20 It is ten to 3:00. I know you need to get
21 back. I have hearings commencing at 3:00 in other
22 criminal cases. We will continue at 8:30 o'clock
23 tomorrow if there is no objection. And I would order
24 Dr. Cornew to be here and continue to list his opinions,
25 the bases of his opinions, and cross-reference the

1 exhibits he intends to introduce. And I will hear brief
2 argument on that tomorrow. Thank you very much.

3 (The proceedings were concluded.)
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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: August 18, 2008

Katie E. Thibodeaux, CSR No. 9858